No. 96

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Supreme Court of the United States

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA, PETITIONER,

vs.

PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED APRIL 23, 1951.

CERTIORARI GRANTED JUNE 4, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 96

ARTHUR LA FRANA, PETITIONER,

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PEOPLE OF THE STATE OF ILLINOIS

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IN CRIMINAL COURT OF COOK COUNTY

To The Honorable Thomas J. Lynch, Chief Justice of the Criminal Court, of Cook County.

Cause of Action—Civil

PETITION OF REVIEW

(Ad Testificendum)

To be Filed in the Docket of the Above Named Court Pursuant to the Laws Made and Provided.

ARTHUR LA FRANA, ex rel., Petitioner,

vs.

JOSEPH E. RAGEN, et al., Warden, Illinois State Penitentiary, Respondent

PETITION OF REVIEW (Ad Testificendum) AS A POOR PERSON—Filed October 17, 1949

(S.) Arthur La Frana, Petitioner, Pro Se.

Address: The Honorable Thomas J. Lynch, Criminal Court Building, Chicago, Illinois.

Court Clerk: Please inform sender of date received, and Docket Number assigned.

[fol. 1] AFFIDAVIT OF VERIFICATION AND PAUPERCY

I, Arthur La Frana, an inmate of the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, having first been duly sworn, aver and depose, to wit:

I am the identical Arthur La Frana, named in the attached petition, as petitioner, and in the attached documents and papers.

I am a citizen of the United States of America, a resident of the State of Illinois, and am a poor person within

the meaning of the law, having neither Personal nor Real Estate Property, nor assets of any kind, Tangible or Intangible, and is therefore unable to pay the costs of this action or give Surety therefore.

I firmly believe I have a just cause of action worthy of consideration of this Honorable Court, and pray that the Court will grant me leave to file, prosecute, and defend this action as a poor person, In Forma Pauperis.

I affirm that all documents attached as Exhibits in this cause of action are true and correct copies of the original documents now in my possession, which original copies will be submitted to the consideration of the Court by whoever or whatever attorney is appointed to assist me, or submitted to the Court in any manner ordered.

I truly believe that all statements made in the body of these petitions are true and correct in every word and phrase, and that they are made in firm conviction and belief.

I am acting in good faith, and pursuant to and by the provisions of a bill enacted by the General Assembly of the State of Illinois, and under the Bill of Rights of the Constitution of the State of Illinois, and the United States of America.

[fol. 2] Being a poor person and acting under a legal disability, I am praying this Honorable Court to appoint capable and competent counsel to assist, support, and aid me in the prosecution, defense, and conclusion of this action at law, in the nature of a Petition of Review.

Your petitioner further files his Motions for the following:

1. Motion for Petition of Review, Ad Testificendum, that petitioner may be heard in his own proper person, as well as by Counsel, that further essential evidence may be shown and given.

2. Subpoena for Authentic and Certified Articles, from the Daily News, the Daily Sun Times, and the Herald American dated December 11, 12, 13, 14, 1937, pertaining to the robbery purpetrated at the Windsor Theatre, Friday, December 10, 1937, between the hours of 8:30 and 9:00 p. m.

3. Subpoena for Authentic, Certified and Unretouched Photographs from the files of the Daily News, the Daily

Sun Times, and the Herald American, taken at the Hudson Avenue Police Station on January 4, 1938, pertaining to the prisoner, Arthur La Frana.

4. Subpoena for all files, papers, and arrest records, from the Shakespeare Avenue Station, Albany Park Station, and Hudson Avenue Station, pertaining to the prisoner Arthur La Frana.

5. Motion for sufficient time, and leave to Traverse any and all motions made by Respondent, or his Counsel.

6. Motion for leave to present Arguments and Citations, supporting petitioner's cause.

7. Motion for copies of any and all motions, made by Respondent, or his Counsel, and copies of all rulings, decrees and judgments, made by the Court in this cause.

Wherefore, your petitioner prays for leave to proceed unto conclusion, thi just action at law.

Petitioner Prayeth Not Further Here,

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 3] In Criminal Court of Cook County

Motion For Petition of Review (Ad Testificendum)

I, Arthur La Frana, an inmate of the Illinois State Penitiary, Stateville Branch, Joliet, Illinois, hereby Move and Motion this Honorable Court to issue a Petition of Review, Ad Testificendum, that I may appear before this Honorable Court in person, to testify and to give essential evidence in my own behalf.

Under Section 6, of A Bill For an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted, it is within the jurisdiction and discretion of the Court to order the appearance of the petitioner. It is a right of a petitioner in an action of this kind, to appear before the bar that he may

show further cause and evidence as to why he should have his petition honored.

The right to be heard, includes the right to be heard in person as well as the right to be heard by counsel.

Wherefore, in accordance with law, statutes made and provided, it is prayed that this Honorable Court will issue an order, directed at Joseph E. Ragen, Warden of the Illinois State Penitentiary, Statesville Branch, Joliet, Illinois, and Respondent in this cause, to produce your petitioner in Court for a full and complete hearing, that justice might have the rightful facts of the case for consideration at the hearing, that evidence might be heard for the wronged, and that the petitioner's side of the case may be brought into view as well as the defending party of the petition.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 4] IN CRIMINAL COURT OF COOK COUNTY

SUBPOENA FOR AUTHENTIC, CERTIFIED ARTICLES FROM THE CHICAGO DAILY NEWS, DAILY SUN TIMES, CHICAGO HERALD AMERICAN

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby moves and requests this Honorable Court to issue Subpoenas for Authentic, Certified Articles, from the files of the Chicago Daily News, the Daily Sun Times, and the Chicago Herald American, dated December 11, 12, 13, 14, 1937, pertaining to a witness, Miss Betty Howard, witness to a robbery at the Windsor Theatre, Friday, December 10, 1937, between the hours of 8:30 p. m. and 9:00 p. m.

The right to be heard, includes the right to present evidence, and the right to present evidence, includes the right of process for the procurement of evidence.

Wherefore, in accordance with these inherent rights, it is prayed that this Honorable Court will issue Subpoenas, directed to the Editors and Publishers of the above named News Papers, commanding them to bring into Court, the

requested articles, that justice might have the rightful facts of the case for consideration at the hearing, that the evidence so requested might be heard for the wronged, and that the petitioner's case may be brought into view as well as that of the defendant party.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 5] SUBPOENA FOR AUTHENTIC, CERTIFIED, UNRETOUCHED PHOTOGRAPHS FROM THE CHICAGO DAILY NEWS, DAILY SUN TIMES, CHICAGO HERALD AMERICAN

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby moves and requests this Honorable Court to issue Subpoenas, for the Authentic, Certified, Unretouched Photographs, from the files of the Chicago Daily News, the Daily Sun Times, and the Chicago Herald American, dated January 4, 1938, and taken at the Hudson Avenue Police Station, in connection with the petitioner prisoner, Arthur La Frana.

The right to be heard, includes the right to present evidence, and the right to present evidence, includes the right of process for the procurement of evidence.

Wherefore, in accordance with these inherent rights, it is prayed that this Honorable Court will issue Supoenas, directed to the Editors and Publishers, of the above named News Papers, commanding them to bring into Court, the requested articles, that justice might have the rightful facts of the case for consideration at the hearing, that evidence so requested might be heard for the wronged, and that petitioner's case may be brought into view as well as that of the defending party.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 6] SUBPOENA FOR FILES, PAPERS, ARREST RECORDS FROM THE SHAKESPEARE AVENUE STATION, ALBANY PARK STATION, HUDSON AVENUE STATION

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby moves and requests this Honorable Court to issue Subpoenas, for Files, Papers, Arrest Records, from the Shakespeare Avenue Police Station, the Albany Park Police Station, and the Hudson Avenue Police Station, pertaining to the arrest, incarceration, and custody, of the petitioner/prisoner, Arthur La Frana, arrested December 30, 1937.

The right to be heard, includes the right to present evidence, and the right to present evidence, includes the right of process for the procurement of evidence.

Wherefore, in accordance with these inherent rights, it is prayed that this Honorable Court will issue Subpoenas, directed to the Commanding Officers of the above named Police Stations, commanding them to bring into Court, the requested records, that justice might have the rightful facts of the case for consideration at the hearing, that evidence so requested might be heard for the wronged, and that petitioner's case may be brought into view as well as that of the defending party.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 7] IN CRIMINAL COURT OF COOK COUNTY

MOTION FOR SUFFICIENT TIME TO TRAVERSE ANY AND ALL MOTIONS MADE BY RESPONDENT OR HIS COUNSEL

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby Move and Motion this Honorable Court to grant me leave to receive a true and perfect copy of any and all Motions, made by Respondent or his Counsel for him, in regards to the action presented in the Petition of Review, in which I, Arthur La Frana, am the petitioner, and Joseph E. Ragen, stands as the Respondent.

Under the provisions of Section 5, of A Bill, for an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted, the Court has the jurisdiction and discretion to allow your petitioner the right to reply to any and all allegations or contentions made by the Respondent or his Counsel. Should petitioner not be allowed to do so, regardless of how just his petition, or how irrevelant the allegations or contentions of the return may be, petitioner would be suffering an injustice.

Wherefore, I, Arthur La Frana, pray that such copies of all motions made by the Respondent, or his Counsel for him, be made available to me, and that refutations and counter argument may be made, that the case as it truly is made be considered by the Court.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 8] In Criminal Court of Cook County

Motion for Leave to Present Arguments, Citations

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, hereby Move and Motion this Honorable Court to grant me leave to present Arguments, Citations, and discussion on authorities, in support of, and in addition to, the Original Petition of Review, in the nature of Additional Pleadings.

Under Section 5, of A Bill, for an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted, the Court has the jurisdiction and discretion to "make such orders as to amendment of the petition or any other pleadings, or as to pleading over, or filing further pleadings, or extending the time of filing any

pleading other than the original petition, or as shall be appropriate, just and reasonable and as is generally provided in Rule 8 of the Supreme Court and section 46 of the Civil Practice Act."

Wherefore, I, Arthur La Frana, pray that such leave shall be granted me to present Arguments, Citations, and Authorities, pertinent to the petition, and in addition to, that the case may be more fully and more clearly presented, and the ground thereof, may be more fully pleaded thereto.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 9] In Criminal Court of Cook County

Motion for Copies of Any and All Motions Made by Respondent or His Counsel and Copies of All Rulings, Decrees and Judgments Made by the Court in This Petition

I, Arthur La Frana, an inmate in the Illinois State Penitentiary, Stateville Branch, Joliet, Illinois, do hereby Move and Motion this Honorable Court to grant me leave to receive true and perfect copies of any and all Motions made by the Respondent or his Counsel, and true and perfect copies of all Rulings, Decrees and Judgments, made by this Honorable Court, in regards to the action presented in the Petition of Review, in which I, Arthur La Frana, am the petitioner, and Joseph E. Ragen, stands as Respondent.

Should the State's Attorney's Motion to Dismiss be allowed, or should Petition of Review be denied, or favorable judgment therefrom, be denied, petitioner needs the requested copies that he may file his appeal to a higher court, that justice might be done him.

Wherefore, I, Arthur La Frana, pray that such copies of all motions made by the Respondent or his Counsel, be made available to me, and that all Rulings, Decrees and Judgments mad- by this Honorable Court, also be made

available to me, so that in the event of an adverse decision, petitioner may appeal to a higher court.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 10] In Criminal Court of Cook County

[Title Omitted]

Petition of Review

The Honorable Thomas J. Lynch, Chief Justice of the Criminal Court of Cook County

May It Please the Court:

Your petitioner, Arthur La Frana, prays leave to prosecute this Petition of Review, as a poor person, that he may secure his just and lawful "rights", "privileges", and "immunities", within the meaning of the "due process" and "equal protection" clauses of the Illinois State Constitution and the Constitution of the United States of America, and that he be granted just and lawful relief from his illegal confinement.

Petitioner further presents that this matter before this Honorable Court does not require lengthy debate as to the legality or merits of the facts as stated herein, and that the points relied on by petitioner are well founded in law and are of simple construction and easily adjudicated.

[fol. 11] Comes now your petitioner, Arthur La Frana, who respectfully presents unto this Honorable Court that the said petitioner, Arthur La Frana, is now illegally confined and imprisoned in the Illinois State Penitentiary, Stateville Branch, at Joliet, Illinois, by one Joseph E. Ragen, Warden of the said Penitentiary, who is hereby made respondent to this Petition of Review.

Petitioner further presents that the said illegal confinement and imprisonment are pursuant to illegal judgments and sentences ordered and entered by the Honorable John C. Lewe, Judge of the Superior Court of Cook County,

and Ex-Officio Judge of the Criminal Court of Cook County, on the twenty fifth day of February, in the year of our Lord one thousand nine hundred and thirty eight, in certain criminal cases then purportedly pending against the said petitioner and entitled, "The People of the State of Illinois v. Arthur La Frana," Indictment for Murder, being general No. 38-43, and petitioner further presents that the said illegal confinement and imprisonment are pursuant to illegal judgments and sentences ordered and entered by the Honorable John C. Lewe, Judge of the Superior Court of Cook County, and Ex-Officio Judge of the Criminal Court of Cook County, on the fifteenth day of March, in the year of our Lord one thousand nine hundred and thirty eight, in certain criminal cases then purportedly pending against the said petitioner and entitled, "The People of the State of Illinois v. No. 38-46, Arthur La Frana", Indictment For Robbery, etc.

Petitioner respectfully presents that in Indictment No. 38-43, it was considered, ordered and adjudged by the Court that the said Defendant Arthur La Frana is guilty of the said crime of Murder in manner and form as charged in the indictment in this cause, and the said verdict and judgment of guilty, and that he be and is hereby sentenced to confinement at hard labor in the Illinois State Penitentiary for said crime of Murder in manner and form as charged in the indictment whereof he stands convicted and adjudged guilty, for the term of Natural Life, and petitioner further presents that in Indictment No. 38-46, it was considered, ordered and adjudged by the Court that the said Defendant Arthur La Frana is guilty of the said crime of Robbery while armed in the manner and form as charged in the indictment in this cause, and the said plea and judgment of guilty, Therefore, it is ordered and adjudged by the Court that the said Defendant Arthur La Frana be and he hereby is sentenced to the Illinois State Penitentiary for the crime of Robbery while armed in manner and form as charged in the indictment whereof he stands convicted, for a term of years not less than one nor more than life as fixed by a statute for the crime whereof he stands convicted.

[fol. 12] Statement of Facts

Petitioner states:

A. That he is one of three defendants.

B. That he was arrested Thursday, December 30, 1937.

C. That he was Indicated and Arraigned January 11, 1938.

D. That he was convicted and sentenced to the term of Natural Life, on Indictment No. 38-43, on the charge of Murder.

E. That he was convicted and sentenced to the term of One year to Life, on Indictment No. 38-46, on the charge of Robbery, etc.

F. That sentence in Case No. 38-43, and sentence in Case No. 38-46, are to run concurrently, one with the other.

G. That in July, 1946, he petitioned the Governor of the State of Illinois, and that such petition was denied (Exhibit 1).

H. That in December, 1947, he petitioned the Governor of the State of Illinois, via the Special Malaria Docket, and that said petition is still pending.

I. That in March, 1948, he petitioned the Honorable Cornelius J. Harrington, Judge of the Superior Court of Cook County, Ex-Officio Chief Justice of the Criminal Court of Cook County, for Transcript of Record, and said petition was denied (Exhibit 2).

Petitioner contends:

1. That he was arrested without warrant and by subterfuge.

2. That he was not promptly brought before a magistrate, but held incommunicado by police for eleven days and denied the right to see counsel, friends or relatives.

3. That he was semi-starved by the police, shuttled from station to station, questioned for prolonged periods, beaten, and forced to sign statements and re-enact a crime of which he is innocent.

4. That the Trial Court exceeded and list its jurisdiction to render judgment, and that the judgments and sentences are void for lack of due process of law.

5. That he was convicted by fraud and false pretense.

6. That he had incompetent counsel.

7. That when he was plead guilty by counsel, in Case No. 38-46, he was under psychological and mental duress.

8. That he is legally and justly entitled to relief from confinement.

9. That this Honorable Court has jurisdiction to act in this matter.

[fol. 13] 1.

The arrest record (Requested via Subpoena) will show that petitioner was arrested without warrant, Thursday, December 30, 1937, between 5:30 a. m. and 7:00 a. m., by Officers Shapolski and Fitzgerald, of the Shakespeare Avenue Police Station.

Officers Shapolski and Fitzgerald came to the home of petitioner at 2621 West Cortland Street, and seizing petitioner, took him to the Shakespeare Avenue Police Station on the pretext of having him identify a supposed suicide. At the police station, petitioner was fingerprinted and confined in a verminous and filthy isolation cell, and subjected to police abuse and intense questioning.

While police have a right to arrest without warrant under certain circumstances, such arbitrary acts are an abuse of the power entrusted to them. This is especially so where there is no cause given, nor reason or explanation as to why there should be an arrest or why petitioner should be the one selected to be arrested. And no reason or explanation was forthcoming at the trial. But, whatever reason there was, should have been left to the discretion of a magistrate or judge to decide whether or not an arrest was warranted.

Being without influential friends, petitioner was at the mercy of capricious police officers, and subject to there every whim without relief. Petitioner was not important enough nor powerful enough to force inquiry into the discrimination practiced by the police officers against petitioner, or the denial of due process of law suffered at the hands of the police. Lacking such friends and power, petitioner had to submit to the will of the police.

2.

The arrest record (Presented via Subpoena) and Transcript of Testimony (Exhibit 3, p. 9, note 27.) will also show that petitioner was arrested December 30, 1937, and

had no hearing of any kind until January 11, 1938, when petitioner was Indicted and Arraigned in the Criminal Court, eleven days after arrest. Such cruelly long detention is purposeful discrimination, and is deliberate denial of due process of law and equal protection of law.

Petitioner submits that police have a right to arrest without warrant, but only where there is positive knowledge that a crime has been committed, and certain knowledge that the person to be arrested has committed or participated in it. But, in such cases, as in cases of arrest upon warrant, the statutes set certain limits and restrict arresting officers to certain procedures. Procedures that must be complied with to meet minimum requirements of due process of law.

[fol. 14] It is a settled rule that if a statute gives a remedy or method of procedure in the affirmative, without containing any express or implied negative, the Court cannot overlook or condone methods of procedure that are contrary to the statute or methods calculated to evade the statute. This is true of any and all procedures or processes based on statute law, and there can be no discrimination as to persons or classes of persons. At law all men are equal.

The Illinois Statutes provide modes of orderly procedure on arrest with or without warrant, and that is, an arraignment before a magistrate "without un-ecessary delay". That mode of procedure must be followed to the exclusion of all others. Whim or capriciousness has no place in the enforcement of law. Each step is bound by statute, and each step must be observed by the law enforcing agencies, else there is tyranny. Officers who fail to comply with these statutes are discriminating against, and denying to a prisoner his "rights", "privileges" and "immunities" secured by Federal and State Constitutions and at statute and common law. And, such denial of "rights", "privileges", and "immunities--, cannot be said to end when a prisoner who has suggered such loss, is finally arraigned in a court. The overwhelming advantage gained by police over such prisoner is psychological and physical and cannot be dispelled by court appearance, and any evidence obtained by such means and advantage gained is used to the fullest extent by police to gain a wrongful conviction. Such evidence and such advantage should be suppressed.

The State Legislature has interposed a magistrate between the citizen and the unrestrained will of the police for the very purpose of preventing such as has occur-ed in this case. Detention for eleven days without a hearing is as unreasonable as it is illegal. Any fruits gained from such illegal detention is illegal in nature and character. And illegal fruits thus gained should be left to wither where they grew,—in the police station from whence they came.

Petitioner submits that it is a well established rule in State Courts as well as Federal Courts that undue detention is a strong enough form of coercion to shut out any confession or statement obtained in such manner, and render them inadmissable. Courts that do not adhere rigidly to the rule modify it to the extent that detention is a form of coercion when accompanied by other circumstances that tend to show coercion. In the instant case the cruelly long detention was coercive, and was especially so in that petitioner never having been in trouble before and ignorant of illegal police practices, was held incommunicado by abusive police, shuttled from station to station, denied the right to see counsel, relatives or friends, and was excessively questioned for varying periods so that he had little or no rest for eleven days. Petitioner contends that such detention is a form of "third degree". Petitioner reiterates that evidence, confessions, statements or advantage thus gained il-egally by police should be suppressed, and not used against a helpless prisoner.

[fol. 15] 3.

Petitioner contends that the simi-starvation diet as practiced by the Chicago Police on prisoners in their custody is a form of coercion. Surely bologna sandwiches, the sole diet of petitioner for eleven days, can in no sense be called adequate. Petitioner's normal weight at the time of his arrest was approximately 155 lbs. Yet eleven days later when he was taken to the County Jail, he weighed 135 lbs. a loss of some twenty pounds.

The "bologna" diet prolonged for a period of eleven days, the shuttling of petitioner from station to station, and the intense questioning for varying periods, is in fact a "third degree" and is clearly a case of undue influence.

used in obtaining statements from petitioner. These undisputed facts constitute more than mere presumption of undue influence, they clearly show as a matter of law, coercion and duress used in obtaining the challenged statements and re-enactment.

Further, the Transcript of Testimony shows that actual brutality was used. Captain Goldberg testified:

That he didn't know and wasn't interested in how long petitioner had been in custody (Ex. 3, p. 1, n. 2; Ex. 3, p. 4, n. 15).

That so far as he knew, petitioner had been fed (Ex. 3, p. 1, n. 3).

That petitioner's black eye was a result of a "tussle" with him and Officer Perkins (Ex. 3, p. 2, n. 6; Ex. 3, p. 3, n 9; Ex. 3, p. 5, n. 17; Ex. 3, p. 6, n. 21; Ex. 3, p. 6, n. 20).

That at the time of the alleged "tussle", petitioner's handcuff was on one wrist (Ex. 3, p. 2, n. 6; #x. 3, p. 3, n. 10; Ex. 3, p. 5, n. 17; Ex. 3, p. 5, n. 19).

Officer Perkins testified:

That he aided Captain Goldberg in subduing petitioner in the alleged "tussle" (Ex. 3, p. 10, n. 29).

That at the time of the alleged "tussle", petitioner had a handcuff on one wrist (Ex. 3, p. 10, n. 29).

Dr. Constantine Theodor, County Jail Physician, testified:

That on January 11, 1938, petitioner entered the County Jail with a black eye and bruised wrists (Ex 3, p. 7, n. 24).

That bruises could not have resulted from handcuffs alone, "but the way they used the handcuffs" (Ex. 3, p. 8, n. 26).

That such bruises would be caused by "pressure" exerted on the handcuffs, and that "pressure" could have resulted from the alleged "tussle" (Ex. 3, p. 9, n. 27).

[fol. 16] In cross examining the County Jail Physician, the State, in effect, concede that the bruised wrists were caused by handcuffs (Ex. 3, p. 9, n, 27). Petitioner contended at the trial, and still contends, that the black eye, the bruised wrists, and sundry other bruises were caused solely by police brutality. The most convincing positive evidence contained in the Transcript of Testimony supporting petitioner's contentions, evidence that cannot be impeached, is the impossibility of both wrists being bruised in a "tussle" when the handcuffs are on but one wrist. On this point the record must prevail. Captain Goldberg and Officer Perkins both were explicit as to the wearing of the handcuff on one wrist at the time of the alleged "tussle". If there was a "tussle" such as Captain Goldberg described, and under the conditions he testified to, petitioner submits that it would be impossible for both wrists to be injured in such "tussle". Therefore, petitioner's contention that the bruised wrists were the result of police brutality stands uncontroverted.

The State conceded that petitioner was held in various police stations for eleven days, and the State conceded that petitioner's black eye and bruised wrists were caused by handcuffs, and therefore the State concedes, in effect, that the statements and re-enactment were obtained by duress and undue influence. And in addition to these points as conceded by the State, is the fact that petitioner was semi-starved for eleven days, was held incommunicado, and denied the right to see counsel, friends or relatives. If these things be not coercive, what then is coercion?

Wherefore, petitioner submits that statements and re-enactment obtained under the conditions shown to exist at the time of their taking, were made under duress and were inadmissable as evidence, and the admission of such statements and re-enactment into evidence was a denial of due process of law.

Petitioner's principal complaint is the obvious denial of due process of law sustained by petitioner in the admitting into evidence the "enforced" statements and re-enactment made to police officers in whose custody petitioner was incarcerated. A denial that voids the conviction and judgment, and nullifies it.

The Constitutional privilege against self-incrimination

is essentially a personal one, and grows out of the high sentiment and regard of American Jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality. It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him. Physical torture and other less violent but equally reprehensive modes of compelling the production of incriminating evidence are thereby avoided.

[fol. 17] The immediate and potential evils of compulsory self-disclosure transcend any difficulties that the exercise of the privilege may impose on society in the detection and prosecution of crime. While the privilege is subject to abuse and misuse, it is firmly imbedded in our constitutional and legal frameworks as a bulwark against iniquitous methods of prosecution. It protects the individual from any disclousre, in the form of oral testimony, documents or chattels by legal process against him as a witness.

Confession by torture is not one of the precepts by which the civilized world infers guilty. It has always been the unquestioned law in this country that no statement made by a person accused of crime shall be admissable in evidence unless such statement is the free and voluntary statement of such accused. And it has always been the rule that the exertion of any degree of influence or coercion by persons in whose custody the accused is placed which tends to cause duress or coercion renders the statement involuntary and inadmissable. And it is also a rule that such influence or coercion will not be measured to determine whether it actually had an effect on the accused's mind, but that such things shall be presumed to have been coercive and to have been the prompting agent which caused him to make the statement.

There is such influence and coercion present in the Transcript of Testimony in this case. Petitioner submits that it could hardly be more clearly shown than it appeared in the testimony of the various witnesses. The testimony offered by the State in their attempt to show the statements and re-enactment were voluntary was that of the witnesses present when the statements were reduced to writing—all

policemen, prosecutor and reporter, and, opinions by the County Jail Physician, which in fact, favors petitioner's contentions.

The vague, inconclusive and evasive testimony of the police officers is the only evidence that in any way tends to contradict the contentions of the petitioner as to how he was brutally treated and forced to sign statements and re-enact a crime of which he is innocent. Surely, if these charges made by petitioner were not true, the State could have produced more comprehensive and conclusive evidence than that of their clumsy, evasive efforts to cover up their mishandling of petitioner. It is very significant that such clear, and conclusive evidence was not submitted. The evidence and testimony thus detailed did not present a conflict of testimony for the determination of the jury as to whether the statements and re-enactment were voluntary, the issue was clear that the statements and re-enactment were involuntary, and as such were inadmissable as matter of law, and that the Court exceeded its jurisdiction in allowing said statements and re-enactment admitted into evidence over the objection of petitioner.

[fol. 18] The statement has very frequently been made that where a court has jurisdiction of the parties and the subject matter, its decree, however erroneous, can only be attacked upon appeal or error; but the rule is subject to an exception ecually well settled,—that a decree may be void because the court has exceeded its jurisdiction. Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void and may be collaterally impeached where ever rights claimed under them are brought in question.

Petitioner submits that this Court cannot escape the conclusion that the Trial Court exceeded its jurisdiction in allowing the coerced statements and re-enactment into evidence, and in exceeding its jurisdiction, lost it, thus rendering the resultant conviction and judgment void.

The Federal and State Constitutions prohibit the use of "coerced" confessions, and, it is a fundamental principle of fair trial that no "*oc*erced" or "involuntary" statement is admissable as evidence. The admission of the "involuntary" statements and re-enactment in the instant case

placed an unfair burden on the defendant in trying to prove his innocence. Even though the Court charged that the burden of proof of "voluntariness" rested on the State. The fact that such "enforced" statements and re-enactment were read into evidence and presented to the jury, unfairly prejudiced the defendant's cause.

The burden of proof is never supposed to shift to a defendant, it always remains with the State to prove guilt beyond any reasonable doubt, and the burden of proof is on the State of every material fact presented by the State. Yet in the instant case, petitioner was forced to prove, ineffectively, that the statements and re-enactment presented against him were "involuntary". That, even though petitioner clearly showed that "undue influence" had been used in obtaining the statements and re-enactment, his evidence was ignored and the incompetent statements and re-enactment was admitted into evidence. There was no disagreement in the testimony on the following facts:

That petitioner was held for eleven days without a hearing.

That petitioner was shifted from station to station.

That petitioner was fed "bologna" sandwiches during police custody with the exception of one alleged meal.

That his bruised wrists resulted from handcuffs, though the testimony differs on how the handcuffs were used.

These facts alone show undue influence and coercion, and most certainly show a lack of "due process of law". Therefore, this Court cannot escape the fact that there was a total lack of fairness in the proceeding, and a total want of due process of law from the arrest to the imprisonment of petitioner, and that the conviction and judgment are illegal and void.

[fol. 19]

5.

A fraud was perpetrated on the Court in that the police and the prosecutor knowingly used statements and re-enactment that had been obtained under duress, and, by their testimony and by inferrence so deceived the Court,

that the Court allowed the "coerced" statements and re-enactment admitted into evidence.

A prosecutor should not be allowed to profit by his use of improper evidence known to have been obtained in an illegal manner, in derogation of a defendant's rights. It is as much the duty of the prosecutor to see that a defendant has a fair trial as it is the Court's duty. The State being sovereign, neither needs nor can accept any undue or questionable advantage over one of its citizens. Its proceedings must be kept upon such ethical plane as will be consistent with its dignity and power. Further, a prosecuting attorney is the representative of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such he is in a peculiar and very definite case the servant of the law, the two-fold purpose of which is that guilt shall not escape or innocence suffer. His duty is to prosecute fairly with earnestness and vigor, but, while he may strike hard blows, he is not at liberty to strike foul ones. It is just as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use legitimate means to bring about a just one.

In the present case, the prosecutor used every method possible to gain a conviction. He fostered a coerced statement and re-enactment off on the Court as "voluntary", and he concealed and suppressed a witness to the crime.

It is a rule that "questions of fundamental justice protected by due process may be raised dehors the record". In the present case, petitioner raises the question, not contained in the record, of the concealment and suppression of an eye witness, one Betty Howard, of 1434 North Dearborn Street, and Artist-s Model, who gave police a discription of the principal participant of the crime. Petitioner's post-conviction investigations disclosed the existence of the witness. A witness that should have testified, and whose existence petitioner authenticates by Subpoena for Authentic and Certified Articles from the files of the Daily Times, The Chicago Daily News, and The Chicago Herald American. Further, petitioner respectfully requests the Court to order the police to disclose and produce the witness

that the reason may be learned why she was concealed and suppressed.

It is a common rule that all the witnesses to an overt act be presented whether they be favorable or unfavorable to the State. Fair play demands it. A prosecutor has neither the power nor the jurisdiction to withhold any witness. It is his duty to present all the witnesses and allow the Court to decide upon their competency. And the only exception to this rule is where there are "an unreasonable number of witnesses to the same overt act". It is the Court's sphere of action to determine the competency or incompetency of a witness, not the prosecutor's. In the instant case the prosecutor presented but one alleged eye witness against petitioner.

[fol. 20] Therefore, petitioner contends that because of the knowing use by the police and prosecutor of "coerced" statements and re-enactment, and the concealment and suppression of an eye witness, a fraud was perpetrated on the Court and the conviction was contrived by false pretense, and said conviction should be set aside.

6.

To comport with a minimum requirement of due process of law, a defendant needs the active and able assistance of counsel. Due process requires more in counsel than mere court appearance and a defence conducted on the spur of the moment. A defense must be more that pro forma, it must be conducted in an active and able manner.

In a Capitol Case, where there is no bail, a defendant is entirely dependent upon his counsel for the procurement of witnesses, for investigation of the case, for advice, and for the perfecting of such defense as the circumstances of the case will permit. In the present case counsel did none of these things. Instead:

He relied on petitioner's wife to serve subpoenas on witnesses.

He did not procure such witnesses as were available for the defense.

He did not investigate the case in any way, nor did he ever discover the existence of the concealed and sup-

pressed witness, Betty Howard, though the smallest of investigations would have shown of her existence.

He merely presented such defense as presented itself on the spur of the moment.

Through inability or negligence he was unable to protect petitioner from police brutality, or give him counsel while in police custody, or even to visit petitioner while in custody, though he had been engaged as counsel by petitioner's father.

That he was completely overwhelmed by the legal talent he faced.

He improperly conducted examination and cross examination of witnesses.

Petitioner's counsel was completely overmatched by the prosecutors he faced in the Court room. Overmatched in demeanor, ability and his attempts to present evidence. The following excerpts taken from the Transcript of Record show clearly the inability of petitioner's counsel.

Mr. Leslie Curtis, Appearing on behalf of the State;

Mr. A. Jefferson Schultze, Appearing on behalf of the defendant La Frana,

Mr. Morton Anderson, Public Defender appearing on behalf of defendants Davies and Peabody.

T. 1, p. 15.

Q. Did you observe Peabody's condition at the time?

A. I did.

[fol. 21] Q. What was it, will you tell the Court?

A. Normal. No different condition than he is now.

Mr. Anderson: I object to any question regarding Peabody.

The Court: Objection sustained.

T. 1, p. 65

Q. If a person has handcuffs around his wrists, strung up on a door with his feet hanging off the ground, could sufficient injury be inflicted on the wrist by such a thing?

A. Yes.

Mr. Curtis: That is objected to, if the Court please. If he is going to put a hypothetical question he has to put in all the facts. He can't just relate half of it.

The Court: Objection sustained.

Mr. Curtis: I move to strike out the answer.

The Court: It may be stricken.

Mr. Schultze: Q. If a person were arrested and then handcuffs enclosed around his two wrists, and further hung up,—hung up on a door or wall and suspended there for fifteen or twenty or thirty minutes, and that being done upon one or two occasions, and later released, would such a thing possibly inflict any injuries to the wrists?

Mr. Curtis: That is objected to. He has not laid the basis for a hypothetical question. He has not enough facts in there.

Mr. Schultze: We have sufficient facts to tell the story.

The Court: You will have to state what is lacking.

Mr. Curtis: Also it was shown that this man was taken to a number of police stations. He was handcuffed all that time——

The Court: Listen to this. Listen to this objection. You must incorporate all that in your question.

Mr. Schultze: I can incorporate his idea and weight, if that is what you want.

Mr. Curtis: No, there was a lot of testimony here of him being taken from one station to the other, to the B of I and the gun section, the re-enactment of the crime, all those things. He was handcuffed to a policeman, handcuffed by himself.

[fol. 22] Mr. Schultze: Well, that would be rather general. You would object because it is too general.

The Court: You have to incorporate all those things in your hypothetical question.

Mr. Schultze: It will take a little more time.

The Court: It is not my wish——

Mr. Schultze: All right.

Q. Have you the height of this man on your card?

A. Yes, five, eight.

Q. Have you his weight?

A. 137.

Mr. Curtis: What was the weight?.

A. 137.

Mr. Schultze: Q. What card are you reading from?

A. La Frana.

Q. La Frana?

A. La Frana.

Q. If a person were arrested and had the handcuffs put on him and taken from one station to another, in a patrol car or squad car, and had been subjected to different types of pushing around, beating, and by several members of the police force, this same person had been hung on a door in the police station or squad room of the police station, and hung there for a period of thirty minutes or thereabouts, with his feet suspended from the ground, with his wrists put back of his back, and hung, in a most uncomfortable and torturous position, would you have an opinion as to whether or not it would be possible for such a person to sustain any marks on his wrists?

Mr. Curtis: That is objected to as to form.

The Court: State your objection.

Mr. Curtis: If the Court please, he has conclusions in there, about torturous treatment.

The Court: That may be stricken.

[fol. 23] Mr. Curtis: And being pushed around. He does not show where he was, what stations. How many times he was taken from one station to the other. The fact that there were handcuffs on him all the time, or the fact that he was taken to the gun department of the B. of I., the County Jail, he was moved to several different stations. He does not say what period of time he was over there; that he was in custody and all this was going on.

The Court: Those things have to be included in your question, every detail.

Mr. Schultze: All right, but I would not think they have sufficient bearing on the question such as that, but I will put it in, if it makes a complete form of the question, in addition to some of the facts that I have stated—some portions of this question that I have already put to you.

If this person were taken from the Shakespeare-Hudson Avenue Station in a patrol wagon, and then to the Shake-

speare Avenue Station, and incarcerated there and subjected to questioning there, and suspended on a door, hung up, with his wrists in the back of his back, with handcuffs on them, feet suspended from the ground, and taken to the County Jail, over a period of say five or six or seven days, and would you, upon finding marks upon his wrist, have an opinion on how these marks may have been inflicted?

Mr. Curtis: I object to the form of the question.

Mr. Schultze: Q. Could it be possible that the hanging off of the door with these handcuffs, could produce such marks?

Mr. Curtis: I object to the form of the question.

The Court: He may answer. Overruled.

A. Yes; it could be injury to the wrist.

T. 2, p. 20.

Q. You say it was not the man you identified. Did you identify any man in this particular case?

A. I just pointed——

Mr. Curtis: I object to that. It is not proper cross examination. He does not represent the man or anything else. Just a repetition.

The Court: Objection sustained.

T. 2, p. 38.

Mr. Schultze: How tall are you Arthur?

Defendant La Frana: When I am dressed up I am five feet ten and a half.

Mr. Schultze: Take your seat.

[fol. 24] Q. How much do you weigh, Arthur?

Defendant La Frana: Before I was arrested I weighed one hundred fifty——

The Court: Get on the witness stands, or better wait.

Mr. Schultze: I wanted to make sure we have this witness here.

By the proceeding excerpts of testimony taken from the Transcript of Testimony, this Court can see that petitioner was not ably represented by counsel to the extent required by due process of law and that petitioner's counsel did

not have the ability nor was evenly matched with the "ace prosecutors" arrayed against him, nor did he have the ability to properly present a defense. For these reasons petitioner contends that he was not ably defended by counsel within the meaning of due process of law.

As there are limitations to what punishment the human body will stand, so are there limitations to what the human mind will stand. There is a point where the will breaks down and is compliant to the overwhelming force that has been brought to bear against it.

In such manner petitioner's will was overcome. Overcome by the relentless inexorable will of the police, the prosecutor, the circumstances surrounding his conviction of a crime of which he was innocent, and the circumstances of his position as a prisoner before the bar. Petitioner had lost his will to such extent that he could no longer protest or even try and protest himself against further persecution. His will was beaten into such submission that he was entirely defenceless and prey to any power that exerted itself against him. It was, in fact, complete physical and psychological intimidation, and was caused by police brutality, cruelly long detention, intense questioning, semi-starvation, and the fact that despite all his protests to the contrary, petitioner's rights had been over-ridden and he had been convicted of a crime he had never committed. Wherefore, and to what purpose, could he resist and fight further still, another charge. And knowing before he was brought before the Court that he would be convicted, not because of innocence or guilt, but because it was the will of the police that he should be so convicted. Their will was law. Court process a matter of form. The irresistable will of the police was directed toward a conviction of petitioner, and, regardless of innocence or guilt that will was carried out, law, statutes, and constitutions notwithstanding.

For these reasons and the threat of still further dire consequences threatened by police and prosecutor, if he should force them to the inconvenience of another trial, that caused petitioner to stand mute while his incompetent counsel entered a plea of guilty against him in Indictment No. 38-46. Dire consequences to the extent that they the police would send petitioner's brother to the penitentiary, and

that they would prosecute petitioner's wife on a charge of running a hayen for criminals, and that any sentence given would be made to run consecutive to his original sentence.

Therefore, and for reasons as aforesaid, petitioner firmly believes that he is entitled to all proper relief from the unjust and illegal convictions obtained against him, and relief from his illegal confinement, and petitioner so prayeth.

[fol. 25] 8.

Law is a rule of universal application, in force until changed by an established method. The law of the land has always been than an accused person has an inalienable right to a fair trial; to due process of law, and to the equal protection of the law. Adherence to these fundamental precepts lifts our jurisprudence above prejudice, pet ideologies, and every other pitfall that leads to injustice. For, justice itself is predicated upon the impartial application of law, to the rich and the poor, to the high and the low. All men being equal in the eyes of the law.

A democratic society in which respect for the dignity of man is central, naturally must guard against the misuse of the law enforcement process. Experience has shown, down through the year, that safeguards must be provided against the dangers of the overzealous as well as the despotic. The Illinois State Legislature has recognized this fact in the adoption of Senate Bill 630 (Exhibit 4,), wherein the Trial Court is given the jurisdiction to review the original proceedings on constitutional and State rights. If there has been a substantial loss or denial of these rights, the petitioner is entitled to relief from his illegal confinement. The question naturally arises as to what loss of rights can be considered as substantial. "Substantial" being the variable element, the question is left to the discretion of the reviewing court.

In the present case the record shows that petitioner was held eleven days without hearing; it shows he was shuttled from station to station and fed on a diet of bologna sandwiches, with the possible exception of one meal; and it shows positive evidence of police brutality during the illegal detention. Clearly a loss of every right conceived by man for the protection of man. And the loss of these

rights did not abate when petitioner finally was arraigned in court. The Trial Court blindly accepted bland police assurances that no force was used in obtaining the challenged statements and re-enactment, and, the illegal detention was not explained at all. The Trial Court was not alert to its duty to protect the accused from the denial of basic constitutional rights. Rights that are fundamental to the rendition of justice, and not subject to the whims of courts, police or prosecutors, and are guaranteed at all times under all conditions.

Because of the denial of his rights by the police, the prosecutor and the Trial Judge, rights guaranteed to him by the Constitution of the United States and of the State of Illinois, petitioner firmly believes that he is legally entitled to relief from his illegal confinement. And because he is innocent of the crime for which he stands convicted, petitioner firmly believes that he is justly entitled to relief from his illegal confinement.

[fol. 26] 9.

Under Section 6, of A Bill for an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted (Exhibit 4), the Court is given jurisdiction to "enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge as may be necessary and proper".

Wherefore, and for reason, facts and contentions as set forth within the body of this Petition of Review, petitioner prays that this Honorable Court grant him relief from his grievous and illegal confinement, and therefore prays to be released according to law.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 27] EXHIBIT 1 TO PETITION

State of Illinois, Dwight H. Green, Governor

Department of Public Safety, T. P. Sullivan, Director
Division of Correction, Springfield

October 7, 1946.

To: Arthur La Frana, No. 13533—Joliet.

Please be advised that your application for executive clemency filed to the July 1946 Term of the Board of Pardons has been denied.

Yours very truly, (S.) Robert B. Phillips, Chief Clerk.

C.

[fol. 28] EXHIBIT 2 TO PETITION

Office of Public Defender of Cook County, Illinois,
Francis T. McCurrie, Public Defender

Telephone: Crawford 7300

Chicago, 8, Illinois, March 24, 1948

Mr. Arthur La Frana—#13533, Box 1112, Joliet, Illinois.

Dear Sir:—

Please be advised that your Petition for Records was presented before Judge Cornelius J. Harrington, Chief Justice of the Criminal Court of Cook County on Wednesday, March 17, 1948, and same was denied.

Very truly yours, Francis T. McCurrie, Public Defender of Cook County, (S.) By Irving D. Bloch, Assistant Public Defender.

IDB/cd.

[fol. 29] EXHIBIT 3 TO PETITION

Extracts from the testimony of Captain Joseph Goldberg, Doctor Constantine Theodor, and Officer Perkins, witnesses in the original proceedings, and relevant to the points in contention in this petitioner, and, are true and accurate copies thereof, with the exception of marginal note and page markings, for purposes of identification.

[fol. 30] STATE OF ILLINOIS,
County of Cook, ss:

IN THE CRIMINAL COURT OF COOK COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,

vs.

ARTHUR LA FRANA (Impleaded)

Indictment No. 38-43, Charge: Murder

Transcript of testimony of Captain Joseph Goldberg and Dr. Constantine Theodore, two of the witnesses heard in the above entitled cause before the Honorable John C. Lewe, Judge of said court, and a jury, beginning on the 15th day of February a. d. 1938.

Mr. Thomas A. Courtney, States Attorney, by Mr. Leslie V. Curtis,

Mr. Harry Posner, appearing on behalf of the State;

Mr. A. Jefferson Schultze, appearing on behalf of the defendant La Frana;

Mr. Morton Anderson, Public Defender, appearing on behalf of defendants Davies and Peabody.

[fol. 31] Direct examination.

By Mr. Curtis:

(1) Q. What is your name?
A. Joseph Goldberg.
Q. Where do you live?
A. 2458 Morse Avenue.
Q. What is your position on the police force?
A. Supervising Captain of Police.

Cross-examination.

By Mr. Schultze:

(2) Q. Captain, who arrested Arthur La Frana, if you know?

A. Definitely, I could not say, some officer of the 32nd district.

(3) Q. Were you able to determine how many days he had been in custody when you first saw him?

A. No, I was not interested in how long he had been in custody.

Q. Did you look at the arrest slip to determine when the arrest was made of this defendant?

A. No sir, I was not interested in that.

(4) Mr. Schultze:

Q. What did you do?

A. I walked to the door of the office and there was three or four men in custody, Peabody and Davies were two of them.

Q. This was on the 31st of December?

A. Yes. And I said, separate those men and don't have them together.

(5) Mr. Schultze:

Q. Did you interrogate any of the three?

A. I did not talk to them all. I told the Captain to separate them, lock them up and given them a chance to think it over.

[fol. 32] (6) Q. By the way, did you observe a black eye on La Frana at that time?

A. No, not then. Later on.

Q. Do you know how he sustained that eye?

A. Sure.

Q. Will you tell us?

A. Yes, sure. Captain Horan and Officer Perkins took him up to the washroom, and I had discussed the matter further with Peabody and Davies, and when Davies admitted his share and the part he took in this affair,—I rushed upstairs then——

Q. Davies admitted that to you?

A. Yes, sir. I rushed upstairs then to the washroom to make inquiry where they went, and they told me upstairs. And I went up to the washroom upstairs, and just as I started up the stairs somebody hollered for Captain Horan there. I went in and said, you are wanted on the phone. That left Perkins and I with La Frana. I then sent Perkins down to get some notes that I had left on Captain Horan's desk, and it left me alone with La Frana. He had handcuffs on his right wrist, one cuff, and the other dangling, and I told him that Davis and Peabody admitted being at the Windsor Theatre job and that they accused him of firing the shot. He stood there rather surprised or stunned, but any way he did not say anything; and I was leaning up against the wall on one side, and he was up against the wall on the other. The door was open. He made a rush for the door to go out the door, the door leading downstairs,—the front stairs, or about two feet from the washroom door and when he did I tackled him, and just as I tackled him Officer Perkins come back up with the notes.

Q. You tackled him?

A. (Continuing) When we took him downstairs again he had a black eye.

Q. Well, there is still some mystery how the black eye was inflicted. Will you tell who hit him?

A. I don't know. I swung and he hit the wall. Now I don't know whether——

(7) Q. Did you also kick La Frana in the crotch in this encounter?

A. No, it did not last long enough, because Officer Perkins was there just about the time it started. Of course, the two of us had no trouble.

[fol. 33] (8). Q. Just a moment. Captain, did you send anyone out for a club?

A. No.

Q. Did you send downstairs to get a club?

A. No.

Q. Did you club La Frana?

A. It was not necessary.

Q. Did anybody else club him under your instructions?

A. No. No reason for clubbing him.

(9) Q. You used no force at all except that one blow that you struck?

A. I did not say I struck; I don't know whether I swung, whether I struck him, I don't know. When I swung he hit the wall. And when we got downstairs he had a black eye.

(10) Q. He still had the handcuffs on his wrist, did he not, on one wrist?

A. Yes.

(11) Q. Captain, while these men were in custody, were they fed regularly?

A. So far as I know, yes.

Q. Did you leave any instructions?

A. I left no instructions. That is not a part of my duty. Those are instructions and details that the individual captain from any district is instructed on and knows what he has to do with prisoners,—how to handle them.

Redirect examination.

By Mr. Curtis:

(12) Q. Before La Frana made the statement, do — recall whether or not the statement of Daries and Peabody were read to him?

A. Yes, sir.

Q. Who were they read by?

A. By Mr. Jackson. I called him in. I think his name is Isaacson, the court reporter, read him the shorthand notes from his book.

[fol. 34] (13) Recross-examination.

By Mr. Schultze:

Q. Did you threaten La Frana and Davies that if they did not go down there and go through some re-enactment, it would be just too bad for them?

A. No, it was not necessary to threaten them.

In Rebuttal

Direct examination.

By Mr. Curtis:

(14) Q. Captain, calling your attention to Monday, the 3rd of January, 1938, between the hours of two and four o'clock in the afternoon at the Hudson Avenue Police Station, did you strike Arthur La Frana, did you put his hands behind his back and handcuff them and hang him on a door. Did you hit him in the stomach with your fist?

A. I did not. I was not at that station.

Q. What time did you arrive at the Hudson Avenue Station on January 3rd?

A. The first time I had been at the Hudson Avenue Station in three months was at 7:30 that evening.

Cross-examination.

By Mr. Schultze:

(15) Q. Captain, how many days did you have custody of Davies and La Frana?

A. I never had custody of Davies and La Frana at any time.

Q. You are supervising captain, your subordinates had them in custody?

A. They did, yes, sir. I didn't.

Q. How many days, five or six days?

A. I don't know. I did not check and I was not interested.

[fol. 35] (16) Q. Did you see anything occur in your presence during those forty minutes that would indicate, as would reflect any undue brutal treatment as to these two boys?

A. None, except furnishing him cigarettes, if that is brutal. That is the only brutal act that I saw.

(17) Mr. Schultze:

Q. You were in the washroom alone with La Frana?

A. For about a minute or a minute and a half, just long enough to tell him that Davies and Peabody——

Q. I am asking how long, a minute and a half—in that minute and a half there was a fight, was there between you and La Frana?

A. No fight. No fight.

Q. No.

A. No fight.

Q. Didn't you testify here before that you swung certain fists——

A. Well, that was not a fight. He tried to get away. It just did not last long enough, he swung and I swung, and it was all over.

Q. What did you swing with?

A. He had the handcuffs on the wrist, jangled off, and started out the door, and I went after him.

Direct examination.

By Mr. Curtis:

(18) Q. By the way, Captain, where are your offices?

A. On the second floor of the Shakespeare Avenue Station.

(19) Q. Now, was La Frana handcuffed at that time?

A. No, sir. He had handcuffs on his hand but he was not handcuffed.

Q. You mean one cuff was on?

A. Dangling on his right wrist, yes, sir.

[fol. 36] (20) Q. Will you relate what happened?

A. La Frana was standing up against the radiator. There was a radiator on the west wall of the washroom, about a foot and a half or two feet inside the door of the washroom. I was standing up against a partition that separates the toilets in this washroom. La Frana had the cuff on his hand, and I saw him swinging it around to get loose—to get the loose end into his hand; as he got it into his hand he left the door and made a swing, and I after him. And as we got out the door just outside the washroom door, to the right about one foot is the entrance leading to the stairs, leading to the outside. And as he swung right out of that door, I after him and I swung and landed him, and both us went down. Just at that time Officer Perkins

was coming up the stairs with the notes that I had sent him down for. We subdued La Frana and took him downstairs.

Cross-examination.

By Mr. Schultze:

(21) Q. You would not call that a battle at all?

A. No battle whatsoever. Nothing to fight about.

Q. And as a result of that La Frana sustained a bruised eye or a black eye, and a bruised cheek bone, is that right; or any other injuries resulting from that?

A. That is the only injury that he had; that's the only injury I have noticed.

Q. He had just one cuff on his wrist?

A. That is all.

Q. And the other one dangled loose off of that one?

A. Yes, sor.

(22) Q. When you took La Frana and Davies to this theatre, neither of them attempted any escape, did they?

A. Did not take them to the theatre. I was in another car. I followed.

Q. You were near there?

A. I was near there—they were handcuffed to a policeman at that time.

[fol. 37] Dr. Constantine Theodor,

a witness called on behalf of the defendant La Frana, being first duly sworn, testified (out of the presence of the jury) as follows:

Direct examination.

By Mr. Schultze:

(23) Q. Your full name?

A. Dr. Constantine Theodor.

Q. Your profession?

A. Physician and surgeon.

Q. Where?

A. In the State of Illinois.
Q. You are assigned to what Place-
A. County Jail.
Q. Assistant physician of the Cook County Jail?
A. Yes, sir.

(24) Q. You had occasion to examine a prisoner, Arthur La Frana?

A. Yes sir.
Q. Will you tell us when he entered the County Jail?
A. January 11, 1938.
Q. Did you personally examine Arthur La Frana?
A. Yes, sir.
Q. Will you tell what his examination disclosed?
A. Physical examination?
Q. Physical examination, yes. Have you a record of the examination?
A. Yes, I have.
Q. To refresh your recollection?
A. Yes, I have.
Q. Will you tell us, the Court, Judge Lewe what it shows?
A. It shows condition of heart, fair; condition of lungs, negative; general physical condition, fair; black eye left—right, rather. Bruise on both wrists.

[fol. 38] Mr. Schultze: All right, but I would not think they have sufficient bearing on the question such as that, but I will put it in, if it make a complete form of the question, in addition to some of the facts that I have stated—some portions of this question that I have already put to you.

If this person were taken from the Shakespeare-Hudson Avenue Station in a patrol wagon, and then to the Shakespeare Avenue Station, and incarcerated there and subjected to questioning there, and taken back again to the Hudson Avenue Station, and further questioned there, and suspended on a door, hung up, with his wrists in the back of his back, with handcuffs on them, feet suspended from the ground, and taken to the County Jail, over a period of say five or six or seven days, and would you, upon finding marks upon his wrist, have an opinion on how these marks may have been inflicted?

Mr. Curtis: I object to the form of the question.

Mr. Schultze: Q. Could it be possible that the hanging off of the door with these handcuffs, could produce such marks?

Mr. Curtis: I object to the form of the question.

The Court: He may answer. Overruled.

A. Yes, it could be an injury to the wrist.

Q. It would be an injury to the wrist?

A. Yes.

Cross-examination.

By Mr. Curtis:

(26) Q. Doctor, these injuries could have been made by handcuffs, do I understand that to be the answer?

A. No, not by handcuffs alone, but the way they used the handcuffs.

[fol. 39] (27) Q. Doctor, he was arrested on the 30th of December, 1937, he was arrested and taken to the Shakespeare Avenue Station, he was taken the next day in custody, the 31st, at the Shakespeare Avenue Station, where he confessed to certain robberies; he was in the custody of the police all during that time. He was handcuffed all during the day of December 31st. On the 1st of January, 1938, he was handcuffed to officers and taken to the Albany Park Station where he stayed the 1st and 2nd. He was removed the 2nd of January, 1938, from the Albany Park Station, handcuffed, back to the Shakespeare Avenue Station. At 6:25 on the evening of January 3, 1938, he was taken to the Hudson Avenue Police Station. That he was in the Hudson Avenue Police Station with handcuffs on him until approximately from 6:25 in the evening of the 3rd until the morning at about three o'clock of the 4th.

On the 4th of January, 1938, he was handcuffed to a police officer, taken in an automobile to the Windsor Theatre on North Clark Street, where he was handcuffed to an officer, he was taken out of the car, walked with the officer from the car to the window of the cashier at the Windsor Theatre, where certain transactions took place, that he turned while he was there, showing how he turned around, with the handcuffs still on him there all this time; was taken back to the automobile, taken over again to the

Hudson Avenue Police Station, from the Hudson Avenue Station being handcuffed again to an officer, he was taken to the Shakespeare Avenue Station; from the Shakespeare Avenue Station he was taken down to the Bureau of Identification at 11th and State Street, all this time being handcuffed, either his two hands cuffed together, or being handcuffed to a police officer. After being taken down to the B of I he was questioned at 11th and State Street and he was again brought back handcuffed to an officer, or handcuffed by himself, his two hands being cuffed together, to the Shakespeare Avenue Station. From the Shakespeare Avenue Station he was again with handcuffs taken to the County Jail, where he arrived on the 11th day——

Your records show the 11th, Doctor?

A. 11th of January.

Mr. Curtis: (Continuing) And while he was at the Hudson Avenue Station with one handcuff on his right wrist and another—the other part of the handcuff he had a fight with Police Captain and another police officer; taking all those things into consideration would your answer be any different, Doctor?

A. Handcuffs never bring injuries except if there is any pressure or any violence. If these things you say he had a fight, maybe it brings injury to the wrist, and of course, that means pressure on the part there. Otherwise, handcuffs alone don't bring injury to the wrist.

[fol. 40] Frank Perkins, a witness called on behalf of the State, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Curtis:

(28) Q. Did you take him to the washroom on the second floor?

A. I did.

Q. Was he handcuffed at that time?

A. There was no handcuffs on his right hand, and the other part was dangling.

(29) Q. On your way back did you hear or see anything?

A. I did.

Q. Tell the Court what you saw or did there at that time?

A. I was halfway up the stairs with the notes when I heard a scuffle at the top of the stairs. I run the rest of the way up, and just at the head of the stairs near the threshold I saw Captain Goldberg and La Frana scuffling, and I jumped into the affray, and between the two of us we subdued him.

Cross-examination.

By Mr. Schultze:

(30) Q. Did you question him again after that day; did you do any questioning the next day?

A. Well, it run into the morning of the next day?

Q. How many continuous hours into the morning did it run, two o'clock in the morning?

A. Yes.

Q. Four o'clock in the morning?

A. We were through by about half past three or four o'clock.

[fol. 41] EXHIBIT 4 TO PETITION

66th G. A.

Senate Bill No. 630

A Bill

For an act to provide a remedy for persons convicted and imprisoned in the penitentiary, who assert that the rights guaranteed to them by the Constitution of the United States or by the State of Illinois, or both, have been denied or violated, in proceedings in which they have been convicted.

Be It Enacted by the People of the State of Illinois, Represented in the General Assembly:

Section 1. Any person imprisoned in the penitentiary who asserts that in the proceedings which resulted in his

conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both may institute a proceeding under this act. The proceeding shall be commenced by filing a petition (together with a copy thereof) verified by affidavit. Petition shall also serve another copy upon the state's attorney by any of the methods provided in Rule 7 of the supreme court. The clerk shall docket the petition upon the receipt thereof and bring the same promptly to the attention of the court. No proceeding under this act shall be commenced more than five years after rendition of final judgment, or more than three years after the effective date of this act, whichever is later, unless petitioner alleges facts showing that the delay was not due to his culpable negligence.

Section 2. The petition shall identify the proceedings in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioner's constitutional rights were violated. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. The petition shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authorities shall be omitted from the petition.

Section 3. Any substantial denial of constitutional rights not raised in the original of an amended petition is waived. [fol. 42] Section 4. If the petition alleges that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person. If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to represent him. If appointment of counsel is so requested, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel.

Section 5. Within thirty days after the filing and docketing of the petition, or within such further time as the court may fix, the State shall answer or move to dismiss. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party.

The court may in its discretion grant leave, at any stage of the proceedings prior to entry of judgment, to withdraw the petition. The court may in its discretion make such orders as to amendment of the petition or any other pleadings, or as to pleading over, or filing further pleadings, or extending the time of filing any pleading other than the original petition, as shall be appropriate, just and reasonable, and as is generally provided in Rule 8 of the supreme court and section 46 of the Civil Practice Act.

Section 6. The Court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such *a*upplementary orders as to rearraignment, retrial, custody, bail or discharge as may be necessary and proper.

Section 7. Any final judgment entered upon such a petition may be reviewed by the supreme court on writ of error brought within six months from the entry of the judgment.

[fol. 43] Service omitted in printing

[fol. 44] In Criminal Court of Cook County

P. C. #21

vs.

Arthur La Frana, Petitioner

People of the State of Illinois, Respondent

Appointment of Counsel—October 27, 1949

This day come the said People by John S. Boyle, State's Attorney. Petitioner not present.

And it appearing to the Court that the said Petitioner is not represented by Counsel, the Court of its own motion doth appoint Attorney Francis T. McCurrie, Public Defender, Counsel for said Defendant in the trial of this cause.

It is ordered by the Court that this cause be and the same is hereby continued to November 17th, A. D. 1949.

[fols. 45-46] IN CRIMINAL COURT OF COOK COUNTY

ORDER EXTENDING TIME TO FILE ANSWER—November 17, 1949

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

On motion of State's Attorney, it is ordered by the Court that the time to file required Answer be and the same is hereby extended to December 8th, A. D. 1949.

It is ordered by the Court that this cause be and the same is hereby continued to December 8th, A. D. 1949 at 2:00 P. M.

[fol. 47] IN THE CRIMINAL COURT OF COOK COUNTY

[Title Omitted]

MOTION TO DISMISS—Filed December 8, 1949

Now comes the respondent, People of the State of Illinois, by John S. Boyle, State's Attorney of Cook County, Illinois, and Charles W. Corcoran, Assistant State's Attorney, and respectfully moves the Court to strike the petition filed herein and to dismiss the proceeding for the following reasons:

1. The instant proceeding is not based upon a valid and subsisting statutory enactment, the statute under which this petition is brought (Senate Bill No. 630, passed by the 66th General Assembly of Illinois) being contrary to the State of Illinois Constitution, which provides for separation of judicial and legislative powers, which invests the Supreme Court of Illinois with final appellate jurisdiction, and which forbids the legislature from adopting special legislation, i.e. legislation which provides for special protection of constitutional rights to one prisoner and not to another.

2. This Court has no jurisdiction to hear matters raised by points 1, 2, 3 and 5 on page 12 of the petition because as to *nisi prius* courts these matters have been finally adjudicated and determined as a matter of law.

3. The contentions of paragraphs 3, 4, 5, 6, 7 and 8 on page 12 of the petition are mere conclusions, unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto.

4. Not confessing or acknowledging all or any of the matters and things in said petition to be true in manner and form as set forth and alleged, the respondent says that the matters and things therein contained, in the manner and form as the same are set forth, are not sufficient in law to maintain his action against the judgment, and particularly the matters and things set out in paragraphs 1 through 7 on page 12 of the petition as condensations of the violations of petitioner's constitutional rights do not, as there and elsewhere presented in the petition show a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his convicton.

John S. Boyle, State's Attorney of Cook County.
By Charles W. Corcoran, Assistant State's Attorney.

[File endorsement omitted.]

[fols. 48-49] In Criminal Court of Cook County

Minute Entry—December 8th, A. D. 1949

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court that the Hearing be and the same is hereby continued to January 19th, A. D. 1950 at 2:00 P. M.

[fol. 50] IN THE CRIMINAL COURT OF COOK COUNTY

[File endorsement omitted.]

[Title Omitted]

MOTION TO DENY MOTION TO DISMISS—Filed January 11, 1950

Now comes petitioner in the above entitled case, in pro se, and respectfully moves this Honorable Court, that the Motion to Strike the Petition and Dismiss the Proceeding, heretofore issued in the above entitled case and filed herein on the relation of the respondent herein by and through John S. Boyle, State's Attorney of Cook County, Illinois, on December 8, 1949, be denied, dismissed and stricken for the following reasons:

Against Paragraph One of Respondent's Motion to Dismiss:

The petition in the above entitled case is based upon a valid statutory enactment, Senate Bill No. 630, and the said statutory enactment, Senate Bill No. 630, is not contrary to the Constitution of the State of Illinois.

Senate Bill No. 630, does not interfere in any manner with the "separation of the judicial and legislative powres", nor does it disturb the final appellate power of the Supreme Court of Illinois. (See Paragraph 7, Senate Bill No. 630, Exhibit 4, Page 42, of Petition). Instead, it empowers the trial court, the court of original jurisdiction, to correct its own constitutional violations leaving final determination resting in the Illinois Supreme Court.

Senate Bill No. 630, is not "special legislation" in that it "provides for special protection of constitutional rights to one prisoner and not another". It does not create a specially protected class of prisoner nor does it discriminate between convicted and imprisoned persons. Theoretically, cases involving the exacting of capital punishment in Cook County could be without the benefits of the bill, but that is because of the peculiar circumstances that surround capital punishment in Cook County. With the obvious exception of those counties wherein certain State Penitentiaries are located, Cook County is the only county

in the State with the archaic and discriminating custom of exacting the supreme penalty within its own borders. State Penitentiaries are the common and usual places to exact the harsher penalties ordered by the courts, from terms of imprisonment to the supreme penalty. Further, cases in Illinois where the punishment is death is considered a distinct class from those involving a lesser penalty, and this distinctness is recognized by the Illinois Courts through legislative enactment, court rules and court procedures. In such cases, a writ of error becomes more than a writ of right, it becomes compulsory with the so necessary records and questions properly preserved, and in indigent [fol. 51] cases, furnished by the State (See Ill. Rev. Stat. Chap. 38, Para. 769, Sec. 1, and Para. 769a, Sec. 1½). Therefore, the State Legislature and the State Courts do recognize a difference in capital and non-capital cases. In capital cases where time is sometimes short, there is a definate need of extra-ordinary remedies. That need was supplied by the State Legislature, Court Rules and Court Procedures. In non-capital cases where life itself is not at stake, remedies can follow a more leisurely course. With capital cases so amply provided for and protected by such extra-ordinary remedies, they can hardly be said to be discriminated against by Senate Bill No. 630, which but brings all cases on a par with capital cases in the matter of remedies. Further, there is no statutory demand that the execution of the capital sentence be carried out locally. Therefore, any discrimination or withholding of a prisoner from the benefits of the protection afforded by the bill, by denying said prisoner the right or privilege of awaiting the exacting of the capital sentence in a State Penitentiary, would be local in nature and revengeful in character.

Senate Bill No. 630 does not expressly deny, imply or create a bar to its benefits in capital cases or non-capital cases. As there are varying degrees of punishment to fit the crime, so are there various means, methods and factors used in determining that punishment to fit the crime. And to say that Senate Bill No. 630 is discriminating as to prisoners, would be the same as saying that the means, methods and factors so used and the very sentence itself is discriminatory because prisoners have varied sentences instead of the same one.

In all non-capital cases a writ of error is a writ of right and subject to requirements and demands in the nature of certain methods of preserving questions that do not appear on the face of the common law record, a record that contains no evidence, testimony or exceptions taken. The writ must be sufficient in law, substance and evidence, all preserved and presented in strictly technical terms and under circumstances involving heavy expense. Where, through inadequate counsel or for any other reason these vital questions are not preserved or preserved properly, suing out such writ of error is a total waste of time, money and effort. Said writ being invariably denied for lack of proper presentation of questions, evidence and pleadings. An effective bar to that remedy is thereby created against indigent prisoners in non-capital cases. The Federal Constitution commands the State to give an available remedy for constitutional questions (See IV. Amend. U. S. Constitution), and the Illinois Constitution is in accord (See Article 2, Paragraphs 2 and 19, Illinois Constitution).

Senate Bill No. 630, does not ursurp the functions of other extra-legal remedies. While it is possible to raise some constitutional questions on writ of error, as error of the court, when such questions are properly saved or appear on the face of the common law record, there was no specific remedy for constitutional questions, available in Illinois until Senate Bill No. 630 was enacted. In sister States habeas corpus is available for constitutional violations, but in Illinois habeas corpus is stifled, constrained and confined by local court opinion and interpretation to where it is primarily a writ for jurisdictional questions. Therefore, the State Legislature recognizing a constitutional and urgent need for a process to open inquiry into constitutional questions, enacted Senate Bill No. 630 in full compliance with the Illinois Constitution (See Article 2, Paragraphs 2 and 19, Illinois Constitution).

[fol. 52] A State's Attorney is an Officer of the State and as such is a Prosecuting Agent of the People of the State. His duty as such officer and agent is primarily with the prosecution, administration, and the upholding of the laws and enactments of the People of the State, and does not lie in questioning the ability or validity of the duly made enactments of that people. Rather, it is his clear and

sworn duty to uphold the law, not to question it. If that law is questionable, that person, group, or class of persons directly effected or discriminated against has the right to question that law. Senate Bill No. 630, does not so discriminate against the State or the People of the State, and therefore the State's Attorney, as agent for the State, cannot properly question that enactment made by the State.

Against Paragraph Two of Respondent's Motion to Dismiss:

On the question of "final determination" by the Trial Court of points 1, 2, 3 and 5 on page 12 of the petition, and raised in paragraph 2 of Respondent's Motion to Dismiss to the effect that said points are foreclosed to this Court as having been "finally adjudicated and determined as a matter of law", the said points are proper matters for this Court's consideration and within the jurisdiction of the Court.

Issues of fact is a coat of many colors. It does not cover conclusions drawn from uncontroverted happenings, when those happenings and conclusions incorporate standards of conduct or criteria for judgement which in themselves are decisive of constitutional requirements. Such standards and criteria, measured against constitutional requirements, are issues for this Court's adjudication. There are distinctions between issues of fact that are foreclosed and issues which, though cast in the form of final determinations of fact, are the very issues for determination by review. In the determination of points 1, 2, 3 and 5 of the rights were violated or ignored. And those findings or lack of findings, being violative of petitioner's constitutional rights, are open to collateral attack. Under Senate Bill No. 630, trial courts are empowered to determine substantial constitutional questions arising out of the proceeding as a whole and not certain portions thereof (See Section 1, Senate Bill No. 630, Exhibit 4, Page 41, of Petition). Fuether, the determination of these said points, as they now stand, are clear substantial sign posts of the illegal road helplessly traveled by petitioner to illegal imprisonment.

Against Paragraph Three of Respondent's Motion to Dismiss:

Respondent's allegation that "The contentions of paragraphs 3, 4, 5, 6, 7 and 8 on page 12 of the petition are mere conclusions, unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto" is erroneous in that the said contentions are fully covered and supported by extracts from the Transcript of Testimony as reported by the Official Court Reporter. While it is true that the petition does not contain the complete Transcript of Testimony, some one thousand pages, it does contain adequate exact copies of significant portions thereof, properly identified and referred to. Such evidence is legally binding and sufficient in quality to show the Court that the petition is grounded in fact. Other evidence that is also positive and conclusive in nature is requested in [fol. 53] the petition by motion and subpoena. Evidence that is unobtainable by petitioner in any way except through process.

Petitioner is under a legal handicap in that through inadequate counsel a Bill of Exceptions was not saved in his case. So he must rely on certain tracts of the Transcript of Testimony, of the *principle* State witnesses, to show his cause. He is also under legal handicap in that he is unskilled in the art and knowledge of the technical presentation of questions and evidence. Petitioner prays that the Court will overlook the crude but sincere presentations of petitioner in his efforts to obtain justice.

Petitioner tried in March, 1948, to obtain a complete Transcript of Record (See Statement I., Page 12; and Exhibit 2, Page 28, of Petition) from the Court but was denied. Since then he has purchased what records as he could afford, but at fifty cents per page the complete Transcript of Testimony, some one thousand pages, is out of the financial reach of his limited earning capacity of some seven dollars per month. Therefore, he must rely on such records as he has in his possession, portions of which are copied and incorporated in his petition. Petitioner sincerely believes that the said contentions and evidence as so presented, and the evidence so requested by motion and subpoena, are legally sufficient to support his cause and warrant him a full and complete hearing.

Against Paragraph Four of Respondent's Motion to Dismiss:

Respondent's statement that he neither confesses nor acknowledges "all or any of the matters and things in said petition to be true in manner and form as set forth and alleged" is misleading in nature in that it does not deny that the said matters and things occured, and does not show nor contend that the said things are false. And, added to the further statement that "the respondent says that the matters and things therein contained, are not sufficient in law to maintain his action", creates the inference that such matters and things could have occured, and, set forth in a different manner would be sufficient in law. In no way does respondent positively deny that the acts complained of in the petition ever happened. Acts that were violative in every sense of constitutional rights. No, no denial. Just the evasive statement that they are "not sufficient in law to maintain his action". Any violation of a constitutional right that leads to imprisonment is sufficient in law to open inquiry thereto.

Petitioner purposely kept his petition as brief as possibly to facilitate the Court in the adjudication of the issues, secure in the belief that the Court is fully cognizant of the laws involved and respondent fully aware of that fact. Brief mentions are made in the petition to 'due process of law', 'equal protection of the law', 'Privileges and immunities', 'constitutional', 'statute and common law', all in support of petitioner's contentions. If, however, respondent requires specific citations of the laws matched and repeated with the contentions and allegations, point by point and question by question, petitioner will be glad to accommodate. Further, petitioner would be glad to aid that accommodation by being allowed to support his contentions by citation and discussion of authorities, point by point and question by question.

[fol. 54] Respondent's further statement in paragraph four of his motion to dismiss that the "matters and things set out in paragraphs 1 through 7 on page 12 of the petition as condensations of the violations of petitioner's constitutional rights do not, as there and elsewhere presented in the petition, show a substantial denial of petitionar's constitutional rights", is erroneous in that the said mat-

ters and things present age old but ever recurrent questions of police abuse and illegal convictions. Questions that ever condemn illegal police practices and procedures, and questions of illegal fruits gained in illegal manner, illegally used in a void process to illegally convict and illegally imprison petitioner. Questions that have been attacked, and legally assailable, since the birth of the nation. In fact, the questions presented in the petition, are the very types of questions that have resulted in the gradual bestowal of rights to man down through the ages. Questions that are today reviewable under the Nation's Charter (See IV Amend. U. S. Constitution), and reviewable under this State's Constitution (See Article 2, Illinois Constitution), and the laws thereunder (See Senate Bill No. 630, Exhibit 4, Page 41, of Petition; See Also Smith-Hurd Stats. Chap. 38, Sec. 736).

Petitioner is unskilled in court procedures, rules of evidence, and technical pleadings. In so being, he is under legal disability and is no match for trained and experienced attorneys. The State Legislature recognizing that men in prison would be so handicapped, made Senate Bill No. 630 broad enough in its terms, subject to the discretion of the Court, to allow such prisoners to set forth their allegations in ordinary terms supported by such evidence as is available under those circumstances. Petitioner is restrained of his liberty and is restricted in that he does not have access nor funds for volumes of law and court procedures, and for counsel wherefrom he could get professional advice. Although petitioner has general idea of his rights, he is at a disadvantage in not being able to sue out his petition in strictly technical terms. For that reason and in the interests of justice, petitioner prays that the Court will overlook, as far as possible, the crude but honest presentment and evidence in the petition, and consider the contentions and evidence for their honest value rather than their lack of polished technical qualities. The primary purpose of such an action at law is that the truth shall prevail. And a petition such as the one at bar, presented under such handicap, should not be bound by strict technicalities for to do so would defeat the very purpose for which Senate Bill No. 630 was intended.

Petitioner does not concede in any manner that the con-

tentions and evidence in support thereof are faulty, or legally deficient. He sincerely believes that they are sufficient in law, sufficient in presentation, and adequately supported by the copies of pertinent parts of the Transcript of Testimony to merit and warrant him a full and complete hearing.

On the question raised by respondent in relation to the contentions raised in the petition, that the said contentions do "not show a substantial denial of petitioner's constitutional rights", petitioner reiterates that any violation of constitutional rights that result in an unjust and illegal conviction is "substantial" in character, illegal in nature; and constitutionally prohibited. The case at bar comes within the scope of these constitutional prohibitions under the 14th Amendment of the United State's Constitution, and under Article 2, of the Bill of Rights, or the Illinois Constitution. And the petition is raised under Senate Bill No. 630, in full accord with both the Federal and State Constitutions.

[fols. 55-56] Wherefore, in accordance with law, statutes made and provided, petitioner prays that this Honorable Court will order the Motion to Strike the Petition and Dismiss the Proceeding, heretofore issued and filed in the above entitled case on the relation of the respondent herein and filed by and through John S. Boyle, State's Attorney of Cook County, Illinois, on December 8, 1949, to be denied, dismissed and stri-ken, that justice might have the rightful facts of tne case for consideration and that the evidence may be heard for the wronged, and that petitioner's case may be brought into view as well as that of the defending, party of the petition.

Petitioner Prayeth Not Further Here.

(S.) Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

Service omitted in printing

[fol. 57] In Criminal Court of Cook County

[Title Omitted]

Order for Continuance—January 19, 1950

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court, that the Hearing on Petition be and the same is hereby continued to March 30th, A. D. 1950 at 2:00 P. M.

[fol. 58] Order—March 30, 1950

[Title Omitted]

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

It is ordered by the Court that this cause be and the same is hereby continued to June 1st, A. D. 1950 at 2:00 P. M.

[fol. 59] Order—May 1, 1950

[Title Omitted]

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued to June 22nd, A. D. 1950 at 2:00 P. M.

[fol. 60] ORDER—June 22, 1950

[Title Omitted]

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And by express consent and agreement between the State's Attorney and Counsel for said Petitioner, now here given and made in open Court, it is ordered by the Court that this cause be and the same is hereby continued to August 3rd, A. D. 1950.

[fol. 61] IN CRIMINAL COURT OF COOK COUNTY

[Title Omitted]

ORDER ASSIGNING CAUSE—August 3, 1950

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

It is ordered by the Court that this cause be and the same is hereby assigned to the Honorable John C. Lewe, Judge of the Superior Court of Cook County and Ex Officio Judge of the ~~Criminal Court~~ of Cook County.

[fol. 62] IN CRIMINAL COURT OF COOK COUNTY

[Title Omitted]

ORDER DISMISSING PETITION—October 11, 1950

This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

And the Court hearing Counsel in support of the motion to Dismiss Petition heretofore entered herein in this cause as well as in opposition thereto, and being fully advised in the premises, doth sustain said Motion and orders that said Petition be and the same is hereby dismissed.

To which Order of the Court in sustaining said Motion the said Defendant by his Counsel now here excepts.

[fol. 63] State of Illinois,
County of Cook, ss:

I, Vincent J. Poklacki, Clerk of the Criminal Court of Cook County, in said county and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of Common Law Record in a certain cause lately pending in said Court, wherein The People of the State of Illinois was Respondent and Arthur La Frana was Petitioner.

Witness, Vincent J. Poklacki, Clerk of said Court, and the Seal thereof, at Chicago, in said County, this Twenty ninth day of November A. D. 1950.

Vincent J. Poklacki, Clerk.

[fols. 64-65] [Caption omitted]

[fol. 66] Affidavit of Paupercy and Motion to Proceed as a Poor Person Omitted in Printing

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[fol. 67] In the Supreme Court of the State of Illinois

Arthur La Frana, Petitioner,

vs.

People of the State of Illinois, Respondent

Petition for Writ of Error Under Post Conviction Hearing Act (As a Poor Person).

Mr. Justice Simpson

Petition—Filed March 14, 1951

Comes now, Arthur La Frana, petitioner in pro se, who hereinafter shows:

That his petition (P. C. #21, in the Criminal Court of Cook County) under the Post Conviction Act was based upon substantial denials and violations of his constitutional rights under the Federal and State constitutions, and the laws thereunder.

That the said denials and violations of petitioner's constitutional right were in relation to the trial proceedings which resulted in his conviction and imprisonment.

That the said denials and violations of petitioner's constitutional rights were within the meaning, spirit, scope and intent of the Post Conviction Act.

That the Criminal Court of Cook County erred in sustaining the People's Motion to Dismiss and dismissing the petition.

That petitioner is entitled to just and lawful relief from his imprisonment.

Wherefore, in accordance with Rule 27B of this Court, your petitioner files application for Writ of Error Under Post Conviction Hearing Act, via petition, that he may secure relief from his unjust and illegal imprisonment.

[fol. 68] On October 17, 1949, your petitioner filed in the Criminal Court of Cook County; a petition, P. C. #21, in which he contended that his rights under the Federal and State constitutions had been substantially denied and violated in the following manner:

1. That he was arrested without warrant and by subterfuge.
2. That he was not promptly brought before a magistrate, but held incommunicado by police for eleven days and denied the right to see counsel, friends or relatives.
3. That he was semi-starved by the police, shuttled from station to station, questioned for prolonged periods, beaten and forced to sign statements and re-enact a crime of which he is innocent.
4. That the trial court exceeded and lost its jurisdiction to render judgment, and that the judgment and sentences are void for lack of due process of law.
5. That he was convicted by fraud and false pretense.
6. That he had incompetent counsel.
7. That when he was plead guilty by counsel, in Case No. 38-46, he was under psychological and mental duress. (Page 12, and elsewhere in petition)

Petitioner also contended on page 12, and elsewhere in the petition, to the effect that he was legally and justly entitled to relief (8), and that the Criminal Court of Cook County had jurisdiction over the matter (9).

The contentions as set forth in the petition were supported almost entirely by portions of the Transcript of Testimony as taken by the Official Court Reporter (P's. 30-38, of petition; and on point 6, pages 20-24, of petition) and those contentions not so covered were supported by motions for proper evidence, via subpoenas and motions (P's. 2-9, of petition), obtainable by petitioner in no other way.

1

The arrest record (Requested by subpoena, p. 6, of petition) would have shown that petitioner was arrested without warrant.

The Illinois Statutes set forth the only provisions whereby an arrest without warrant can legally be made in Illinois (Ill. Rev. Stat. 1949, Chap. 38, para. 657). The cases cited thereunder show that arrest without warrant is repugnant to the Illinois Constitution. The cases cited under the 14th Amendment of the Constitution of the United States, shows that arrest without warrant is repugnant to that document. This was not a case of sudden peril or imminent danger. Petitioner was seized at his home without warrant.

[fol. 69]

2

The arrest record (Requested by subpoena, p. 6, of petition) and the portion of the Transcript of Testimony pertaining thereto (Exhibit 3, of petition, p., 9, n. 27, at page 39, of Common Law Record), shows that petitioner was arrested December 30, 1937, and had no hearing or arraignment of any kind until January 11, 1938 eleven days after the arrest.

Such unusually long detention of petitioner by police without hearing, charge or arraignment was a deliberate, illegal and purposeful discrimination against petitioner's constitutional rights. The Illinois Statutes provide for orderly and prompt arraignment on arrest without warrant. (Ill. Rev. Stat. 1949, Chap. 38, para. 660). The cases cited thereunder show that such detention is a breach of due process of law. And when detention is one of the circumstances in the taking of statements of admission of crime, either voluntary or involuntary, such detention comes within the inhibition as imposed by the United States Supreme Court in McNabb v. United States, 318 U. S.

334-38, and adhered to in Upshaw v. United States, handed down December 13, 1948, by that Court. The "McNabb Rule" as such, has been upheld by this Court in People v. Goldblatt, 383 Ill. 176, and cases cited therein. There has been later holdings in accordance with the "McNabb Rule" in the triple case handed down by the United States Supreme Court in Watts v. State of Indiana; Harris v. State of South Carolina; Turner v. Commonwealth of Pennsylvania, Case No's. 610, 76, and 107, of the October Term, 1948, decided June 27, 1949.

3

In point 3 of the petition, your petitioner showed in a reasonable manner that bologna sandwiches for eleven days was a semi-starvation diet, and as such, was a form of coercion. He also showed that he was shuttled from station to station, and that actual brutality was used in obtaining the challenged statements and re-enactment.

The semi-starvation point was supported in a negative manner by Police Captain, Joseph Goldberg's testimony of indifference of petitioner's welfare in police custody (Ex. 3, p. 1, n. 2, at p. 31, of Common Law Record; Ex. 3, p. 4, n. 15, at p. 34, of Common Law Record; Ex. 3, p. 1, n. 3, at p. 31, Common Law Record), and by the lack of any testimony as to substantial fare fed to petitioner. One officer did say that petitioner was given one regular meal during the detention other than bologna sandwiches.

The shuttling from station to station was supported by the question on facts of the custody as presented by the prosecutor (Ex. 3, p. 9, n. 27, at p. 39, Common Law Record). [fol. 70] On the question of brutality, Captain Goldberg testified that petitioner's black eye was a result of a "tussle" with him and Officer Perkins (Ex. 3, p. 2, n. 6, at p. 32, Common Law Record; Ex. 3, p. 3, n. 9, at p. 33, Common Law Record; Ex. 3, p. 5, n. 17, at p. 35, Common Law Record; Ex. 3, p. 6, n. 21, at p. 36, Common Law Report; Ex. 3, p. 6, n. 20, at p. 36, Common Law Record) but gave no direct testimony on bruised wrists. Captain Goldberg did testify that at the time of the alleged "tussle", petitioner's handcuff was on one wrist,—the right wrist (Ex. 3, p. 2, n. 6, at p. 32, Common Law Record; Ex. 3, p. 3, n. 10, at p. 33, Common Law Record; Ex. 3, p. 5, n. 17, at p. 35,

Common Law Record; Ex. 3, p. 5, n. 19, at p. 35, Common Law Record).

Officer Perkins supported Captain Goldberg's testimony of the alleged "tussle" (Ex. 3, p. 10, n. 29, at p. 40, Common Law Record), and that at the time of the alleged "tussle", petitioner had a handcuff on the left wrist (Ex. 3, p. 10, n. 29, at p. 39, Common Law Record). Petitioner calls attention to the fact that the police officers disagree on which wrist the handcuff was attached to at the time of the alleged "tussle". Hardly a natural error.

There were no opinions given on how a handcuff attached to one wrist could possibly injure both wrists under the circumstances as testified to and implied by the prosecutor (Ex. 3, p. 9, n. 27, at p. 39, Common Law Record).

Dr. Constantine Theodor, County Jail Physician, testified that on January 11, 1938, petitioner entered the County Jail with a black eye and bruised wrists (Ex. 3, p. 7, n. 24, at p. 37, Common Law Record), and that said bruises could not have resulted from handcuffs alone, "but the way they used the handcuffs" (Ex. 3, p. 8, n. 26, at p. 38, Common Law Record), but that such bruises would be caused by "pressure" exerted on the handcuffs, and that such "pressure" could have resulted from the alleged "tussle" (Ex. 3, p. 9, n. 27, at p. 39, Common Law Record). The doctor gave no opinion on how the handcuffs on one wrist could bruise both wrists and the matter was not called to his attention, nor was it called to the attention of the Court. As the matter now stands, petitioner's contentions of police brutality is supported by his testimony and by his physical testimony, and is illogically controverted by physically impossibility. This one point alone should legally warrant inquiry into the circumstances surrounding the taking of the statements and re-enactment, and it would also be very interesting, from a judicial point of view, to see how the police theory of the bruises could be reconciled to the facts.

4

Petitioner's principal complaint is the most obvious violation of his constitutional rights by the admission into evidence the enforced statements and re-enactments. Use of enforced confessions is contrary to the Federal and State constitutions, and to all the concepts of a free organized democratic society. That the law-enforcing agencies are

prone to use force in obtaining confessions is no well kept secret (See Reports of National Committee on Law Observance an- Enforcement, Wickersham Commission on Lawlessness in Law Enforcement, and 1 American Journal of Police Science, 575).

[fol. 71] In the last ten years the United States Supreme Court has voided many State cases for the use of enforced confessions, among which are Haley v. Ohio, 332 U. S. 596; Malinski v. New York, 324 U. S. 401; Ashcraft v. Tennessee, 322 U. S. 143; Ward v. Texas, 316 U. S. 547; Lomax v. Texas, 313 U. S. 544; Vernon v. Alabama, 313 U. S. 547; White v. Texas, 310 U. S. 530; Canty v. Alabama, 309 U. S. 629; White v. Texas, 309 U. S. 631; Chambers v. Florida, 309 U. S. 227; Brown v. Mississippi, 297 U. S. 278; Ashcraft v. Tennessee, 327 U. S. 274; and the recent triple case Watts v. State of Indiana; Harris v. State of South Carolina; Turner v. Commonwealth of Pen-sylvania; Case No's. 610, 76, and 107, of the October Term, 1948, handed down June 27, 1949.

In the "Watts" case Mr. Justice Douglas, in an concurring opinion, held on the detention in that case:

> "It would be naive to think that this protective custody was less than the inquisition. The man was held until he broke. Then and only then was he arraigned and given the protection which the law provides all accused. Detention without arraignment is a time-honored method of keeping an accused under the exclusive control of the police. They can then operate at their leisure. The accused is wholly at their mercy. He is without the aid of counsel or friends; and he is denied the protection of the magistrate. We should unequivocally condemn the procedure and stand ready to outlaw, as we did in Malinski v. New York, 324 U. S. 401, and Haley v. Ohio, 332 U. S. 596, any confession obtained during the period of the unlawful detention. The procedure breeds coerced confessions. It is the root of the evil. It is the procedure without which the inquisition could not flourish in the country."

In McNabb v. United States, 318 U. S. 332, 63 S. Ct. 608, the United States Supreme Court held that detention alone shut out the confession. This Court upheld the "McNabb

Rule" in Goldblatt v. State of Illinois, 383 Ill. 176, and cases cited therein.

It has always been the rule, in Federal and State courts, that a court exceeding its jurisdiction, loses it and loses the power to render judgment. It has also been the rule that where a court permits the use of, and admits into evidence, an enforced confession, that that court has exceeded its jurisdiction in doing so. And, any conviction and judgment resulting from the use of such enforced statements is void for lack of due process.

In all the cases as cited here in point 4, the United States Supreme Court and this Court has held that the circumstances surrounding the taking of the confessions were violative of constitutional rights. Petitioner's case is in point with all of these cases in that the circumstances surround--- the taking of the statements and re-enactment were all in violation of his constitutional rights (Points 1, 2, and 3 of petition). It follows then, that the trial court violated petitioner's constitutional rights in allowing the use of the enforced statements, and the resultant convictions and judgments are void for lack of due process of law.

[fol. 72] 5

Where the prosecutor and police knowingly use evidence that they know to be illegal and that they, themselves, have obtained in an illegal manner (Points 1, 2, and 3 of petition), and foster that evidence off on the court as valid evidence, they the prosecutor and police are gaining a conviction by fraud and false-pretense. And, where they conseal a known witness to the crime, they are aiding and abetting a conviction by fraud and false-pretense.

It is the police and prosecutor's duty to produce all available witnesses to an overt act. There was no superfluity of witnesses in this case. Only one doubtful eyewitness. The evidence requested by subpoena (p. 4, of petition) would have revealed a witness to the crime that the police and prosecutor knew existed. Therefore, by the police and prosecutor's knowing use of the enforced statements and re-enactment, and by their concealment of a known witness, petitioner was convicted by fraud and falsepretense in violation of his constitutional rights.

6

Counsel for the defense must be more than mere pro forma. In the instant case there was no bail and petitioner was entirely dependent upon his counsel for investigation, preparation, and the presentation of his defence. Petitioner's counsel did none of these thing- in an adequate or competent manner (See point 6, of petition, p's. 20-24, of petition, at p's. 20-24, Common Law Record). Further, petitioner's counsel was out-matched by the People's Ace Prosecutors in demeanor, ability and competence. Therefore, the adequacy of petitioner's counsel did not meet the requirements of due process of law.

7

The physical and mental punishment undergone by petitioner in police custody (See points 1-3, of petition) and the circumstances of and surrounding his conviction (see points 4-6, of petition) and the threat of still further dire consequences should he resist (See Point 7, of petition) so shattered petitioner's will that he was forced to allow his incompetent counsel plead him guilty to the "clincher", Indictment No. 38-46. Your petitioner was in no mental condition to resist further police persecution. Petitioner knew that just as surely as night follows day, so certainly would police and prosecutor's will prevail, and guilt or innocence of no importance in the matter.

[fol. 73] 8 & 9

Points 8 and 9 of the petition were in the relation of the justness of the cause, and the invoking of the Trial Court's jurisdiction and power for relief from illegal imprisonment, under the provisions of the Federal and State constitutions and the Post Conviction Act.

On December 8, 1949, the People filed a Motion to Strike the Petition and Dismiss the Proceedings, for the following reasons:

1. The instant proceeding is not based upon a valid and subsisting statutory enactment, the statute under which this petition is brought (Senate Bill No. 630, passed by the 66th General Assembly of Illinois) being contrary to the State of Illinois Constitution, which provides for separa-

tion of judicial and legislative powers, which invests the Supreme Court of Illinois with final appellate jurisdiction, and which forbids the legislature from adopting special legislation, i.e. legislation which provides for special protection of constitutional rights to one prisoner and not to another.

2. This Court has no jurisdiction to hear matters raised by points 1, 2, 3 and 5 on page 12 of the petition because as to *nisi prius* courts these matters have been finally adjudicated and determined as a matter of law.

3. The contentions of paragraphs 3, 4, 5, 6, 7 and 8 on page 12 of the petition are mere conclusions, unsupported in any part of the petition by sufficient evidence, affidavits or reference thereto.

4. Not confessing or acknowledging all or any of the matters and things in said petition to be true in manner and form as set forth and alleged, the respondent says that the matters and things therein contained, in manner and form as the same are set forth, are not sufficient in law to maintain his action against the judgment, and particularly the matters and things set out in paragraphs 1 through 7 on page 12 of the petition as condensations of the violations of petitioner's constitutional rights do not, as there and elsewhere presented in the petition show a substantial denial of petitioner's constitutional rights in the proceedings which resulted in his conviction.

(Page 47, Common Law Record)

Point One, of the motion to dismiss concerning the validity of the Post Conviction Act, under which the petition was brought, has been settled by this Court in Dale v. People of the State of Illinois, Docket No. 31411—Agenda 7—May 1950.

[fol. 74] Point Two, of the Motion to Dismiss concerning the jurisdiction of nisi prius courts in the matters contained in points 1, 2, 3 and 5 of the petition, holding that such matters were determinations of law by the court and as such were final, is erroneous in that the said matters come within the spirit, intent, meaning and scope of the Post Conviction Act.

In Armstrong v. Ohucino, 300 Ill. 140, this Court held:

> "The statement has very frequently been made that where a court has jurisdiction of the parties and sub-

ject matter, its decree, however erroneous, can only be attacked on appeal or error; but the rule is subject to an exception equally well settled,—that a decree may be void because the court has exceeded its jurisdiction. - - - Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void and may be collaterally impeached wherever rights claimed under them are brought in question. The doctrine that where a court has acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgments or decree the law or statute which is applicable to it".

Similar views were held by the United States Supreme Court on the question of "determination of facts" by State courts, in a recent decision handed down by that court in Watts v. State of Indiana, No. 610, October Term, 1948, decided June 27, 1949:

"On review here of State convictions, all those matters which are usually termed issues of fact are for conclusive determination by the State courts and are not open for reconsideration by this Court. Observance of this restriction in our review of State courts calls for the utmost scruple. But "issue of fact" is a coat of many colors. It does not cover a conclusion drawn from uncontroverted happenings, when that conclusion incorporates standards of conduct or criteria for judgment which in themselves are decisive of constitutional rights. Such standards and criteria, measured against the requirements drawn from constitutional provisions, and their proper applications, are issues for this Court's adjudication. Hooven & Allison Co. v. Evatt, 324 U. S. 652, 659, and cases cited. Especially in cases arising under the Due Process Clause is it important to distinguish between issues of fact that are here foreclosed and issues which, though cast in the form of determinations of fact, are the very issues to

review which this Court sits. See Norris v. Alabama, 294 U. S. 587, 589-90; Marsh v. Alabama, 326 U. S. 501, 510."

In the present case, the questions as determined by the trial court were in the nature of illogical conclusions, in violation of constitutional rights, and transcended the character and scope of the court's jurisdiction over such questions. The questions being constitutional in nature and transcending mere error cannot be finally barred from attack by being so autocratically determined by the trial court.

[fol. 75] The said questions, though cast in the form of determinations by the trial court, have never been finally adjudicated by any court. They are therefore in the nature of questions that have never been finally determined, and as such, are open to final determining.

The said questions are effectively barred from proper presentation to this Court on writ of error, as errors of the court, for lack of a bill of exceptions and the questions not appearing on the Common Law Record of the trial proceeding. The questions therefore, being of constitutional nature and within the spirit and meaning of the Post Conviction Act, were proper matters for the trial court's inquiry and within the jurisdiction of the said court. And the said questions, being of constitutional nature and never having been finally determined, are open to collateral attack.

Point Three, of the People's motion to dismiss, contending that the points 3 through 8 of the petition were mere conclusions, unsupported by sufficient evidence or reference thereto, is erroneous in that the said points are constitutional violations. While they may have been overly clarified or inexpertly presented, they were substantial constitutional violations and were amply supported by such evidence as was available to petitioner, and were presented clearly and sufficiently enough to show that petitioner's constitutional rights were in fact denied and violated. Further, the fact that the questions were presented under the Post Conviction Act, within the spirit, meaning, and restrictive provisions of the act, it was the court's duty to consider the effect the violations had on the conviction and not whether they were merely violations or not. That is

the purpose and effect of the act and the purpose and effect of the petition under that act.

Point Four, of the People's motion to dismiss, regarding the sufficiency of the petition in law to maintain the action and the sufficiency therein of the constitutional violations sustained by petitioner, it can only be pointed out that since the founding of our democracy, these same questions have arose in-umerable times. Such violations, where shown to exist, have been held illegal and violative of man's rights under Anglo-American Law. Down through the ages man has had to battle for each and every individual right and the unceasing violation of those rights by overzealous or despotic law enforcing agencies in their devious and evasive methods of contravening those rights. History shows in no uncertain terms that police are prone to abuse the powers entrusted to them. And in every case, brought to attention, where there is evidence showing the violation of these basic rights, the courts have held that inquiry into, and remedy of, those violations, is an inherent or vested right that is secured by the Nation's Charter. Petitioner can cite many many cases, wherein, the showing of constitutional denials and violations, similar to those suffered by petitioner, has voided the trial proceeding and nullified the conviction and judgment. If such recurring questions are not now sufficient in law to maintain an action, man has completely lost his battle to maintain his rights.

[fol. 76] Your petitioner has shown in points 1 through 7 in his petition to the trial court that his constitutional rights were seriously violated in the proceeding that resulted in his conviction and that the said violations were sufficient in law to maintain his action and were substantial enough to warrant inquiry into by the trial court under the provisions of the Post Conviction Act.

On October 11, 1950, the Honorable Frank M. Padden, Judge of the Superior Court of Cook County, Illinois, and Ex-Officio Judge of the Criminal Court of Cook County, Illinois, sustained the People's motion to dismiss and dismissed the petition (P. 62, Common Law Record), as follows, to-wit:

> "This day come the said People by John S. Boyle, State's Attorney and the said Petitioner by his Counsel also comes.

"And the Court hearing Counsel in support of the Motion to Dismiss Petition heretofore entered herein in this cause as well as in opposition thereto, and being fully advised in the premises, doth sustain said Motion and orders that said Petition be and the same is hereby dismissed.

"To which order of the Court in sustaining said Motion the said Defendant by his Counsel now here excepts."

From such order of the Court your petitioner files application, via this petition in accordance with Rule 27B of this Court, for Writ of Error Under Post Conviction Hearing Act, in that the Criminal Court of Cook County erred in sustaining the People's Motion to Dismiss and Dismissing the Petition, for the following reasons:

1. That the said petition was based upon a valid statutory enactment.
2. That the Criminal Court of Cook County had the jurisdiction and power under the Post Conviction Act to inquire into and to adjudicate the matters and things set forth in points 1, 2, 3, and 5 of the petition.
3. That the petition was amply founded on factual constitutional violations, however poorly presented, and was amply supported by sufficient and available evidence properly referred to.
4. That the matters and things as set forth in the petition were sufficient in law and in substance to maintain his action, and that the said matters and things as set forht in the petition were substantial denials and violations of petitioner's constitutional rights.

[fol. 77] 5. That the People's Motion to Dismiss, which being in the nature of a standard pro forma answer and not denying the matters and things set forth in the petition, concedes in effect that the said matters and things are founded in fact.

6. That the matters and things as set forth in points 4, 6 and 7 in the petition were sufficient in law and substance to warrant inquiry into.
7. That, under common law practice as established in Criminal Court procedure on petitions under the Post Conviction Act, the original trial judge should have heard the petition.

Conclusion

A prisoner convicted of crime and imprisoned has a "vested" right to open inquiry into the cause and legality of his detention. A right that is guaranteed to him by both Federal and State constitutions, the laws provided thereunder, and at common law. In Illinois, the State Legislature enacted a valid mode of procedure to inquire into and remedy denials and violations of a defendant's constitutional rights in a proceeding that has resulted in conviction and imprisonment. That enactment was in keeping with, and providing for, that "vested" constitutional right. The petition, P. C. #21, filed under that enactment, fulfilled the requirements imposed in the provisions of that enactment. It clearly showed substantial constitutional violations that were undisputed in the Transcript of Testimony. They were, namely, undue detention, prolonged questioning, shuttling from station to station; and the fact that petitioner suffered certain bruises on both wrists and a black eye while in police custody. The only controversy shown in the testimony was in the last aforementioned item, and in relation to the manner in which the said bruises and black eye were inflicted, and the degree of influence used by police in obtaining the challenged statements and re-enactment. The People, in presenting testimony implying that the wrist bruises were inflicted during, or the result of, an alleged "tussle" between petitioner and certain police officers, completely overlooked the physical impossibility of handcuffs injuring both wrists while only attached to one wrist. This one point alone completely nullifies the credibility of the police testimony on how the bruises were inflicted. This one point alone raises the presumption that police brutality was a fact. And as that fact was clearly supported by petitioner's physical condition and by his testimony, his contentions of police brutality stands in effect, undisputed.

In view of these facts, the trial court's blind acceptance of unreasonable police testimony is illogical and unconstitutional, and cannot be considered as reasonable and legally binding within the meaning of due process of law as a final determination of fact. This is also true of the undisputed questions. A court cannot blindly overlook and accept illegal police practices, destructive of constitutional rights,

without question, and as blindly, accept the illegal and invalid fruits of such practices, and allow their use as a basis for conviction and imprisonment.

[fol. 78] The United States Supreme Court held, in "affirmation of common law principles":

> "This protection reaches all alike, whether accused of crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with enforcement of the laws. The tendency of those who execute the criminal laws of the country to obtain convictions by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights."
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> Weeks v. U. S. (Mo. 1913) 232 U. S. 392, 34 S. Ct. 341, 58 L. Ed. 652, Ann. Cas. 1915c, 1177 L. R. A. 1915B, 834.

In keeping with those principles, this Court held on "involuntary confession":

> "Confessions extorted by violence, brutality, promise, or unlawful confinement for an unreasonable length of time are illegal and may not be offered or received in evidence against the accused, - - -." (p. 561)
>
> "The court should scrutinize with the utmost care the facts concerning an alleged voluntary confession given to police officers by a defendant while under arrest, and should not deem itself bound by the testimony of the police officers alone, without taking into consideration all of the circumstances surrounding the giving of the alleged confession." (p. 570)
>
> (People v. Tomilson, 400 Ill. 555)

In keeping with these "common law principles" and in keeping with due process of law under the 14th Amendment of the United States Constitution and the Constitution of the State of Illinois, the trial court should have excluded

the enforced statements and re-enactment presented by the police and prosecutor to falsely convict petitioner.

The evidence as in support of the petition has clearly shown that the circumstances surrounding the taking of the statements and re-enactment was clearly in defiance of the rights of the petitioner. And the other evidence requested in the petition via motions and subpoenas would have supported the petition in its entirety had a full and complete hearing been allowed.

Therefore, petitioner acting within his constitutional rights under the 14th Amendment of the United States Constitution, the Bill of Rights as set forth in Article 2, of the Constitution of the State of Illinois, the laws and statutes made and provided thereunder, as well as at common law, holds that in the proceedings in which he was convicted there were substantial denials and violations of his constitutional rights within the meaning of the said constitutions, laws and statutes, and at common law, and that the said denials and violations as set forth in the petition came within the spiritm meaning, scope, and intent of the Post Conviction Act, and that the Criminal Court of Cook County should have ordered a full and complete inquiry [fol. 79] into the matter.

Wherefore, and for the reasons set forth within this petition, petitioner believes that the Criminal Court of Cook County, Illinois, erred in sustaining the People's Motion to Dismiss and Dismissing the Petition, and prays that this Honorable Court will his petition as application in good faith, in accordance with Rule 27B of this Court, for Writ of Error Under Post Conviction Hearing Act, and allow him to file as a poor person, without costs, typewritten copies of the said writ and of the Common Law Record in support thereof.

Respectfully submitted, Arthur La Frana, Petitioner, Pro Se.

Duly sworn to by Arthur La Frana. Jurat omitted in printing.

[fol. 80] Notice Omitted in Printing

[fol. 81] IN SUPREME COURT OF ILLINOIS

Error to Criminal Court Cook County, P. C. 21

No. 1135

PEOPLE STATE OF ILLINOIS, Defendant-in-Error,

vs.

ARTHUR LA FRANA, Plaintiff-in-Error

ORDER DISMISSING PETITION—March 23, 1951

And now, on this day, the Court having duly considered the motion for leave to file a writ of error under the Post Conviction Hearing Act as a poor person and for leave to file ten typewritten copies of abstract and brief, and being now fully advised of and concerning the premises; doth allow the motion to sue as a poor person. It is further considered by the Court that after having examined and reviewed the petition and record in the post conviction hearing the same is found to disclose no violation or denial of any substantial constitutional rights of the petitioner under the constitution of the United States or of the constitution of the State of Illinois, and the petition for writ of error on post conviction hearing is accordingly dismissed; also, petitioner granted leave to withdraw petition, if requested.

[fol. 82] Clerk's Certificate to foregoing transcript omitted in printing

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[fol. 83] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 481, Misc.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

ORDER GRANTING CERTIORARI—June 4, 1951

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of cer-

tiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 783, now No. 96, October Term, 1951. The case is placed on the summary docket and assigned for argument immediately following Jennings vs. People of the State of Illinois, No. 95.

(6234)